

# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1954

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No. 153

SECURITIES AND EXCHANGE COMMISSION,  
PETITIONER

VS.

DREXEL AND COMPANY

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WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR CERTIORARI FILED JUNE 21, 1954  
CERTIORARI GRANTED OCTOBER 14, 1954

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**RECORD.****(R-1, 1) NATURE OF ACTION:**

To enforce Plan pursuant to Secs. 11(e) and 18(c) of  
Public Utility Holding Co. Act.

*In the Matter of*

ELECTRIC POWER & LIGHT CORPORATION

ELECTRIC BOND AND SHARE COMPANY

March 7, 1949	Filed Application of Securities and Exchange Commission.
April 12, 1949	Hearing on plan begun before—Clancy, <i>J.</i> Hearing continued and concluded. Decision rendered. Plan found fair and equitable, etc., and enforced. Decree to be submitted on notice.
April 13, 1949	Opinion #18,058 granting injunction asked in application, etc.—Clancy, <i>J.</i>
April 22, 1949	Filed Order approving and enforcing plan as indicated, etc.—Clancy, <i>J.</i> Mailed Notice of Entry 4/28/49—HGL.
June 25, 1952	Filed Order for hearing on Amended Plan rei. 10/2/52, Rm. 506 and directing Electric Power & Light to mail notices thereof; etc.—Clancy, <i>J.</i> —(stamp) Mailed Notice of Entry 6/26/52.
June 25, 1952	Filed Supplemental Application of S.E.C.

June 27, 1952	Filed Transcript of Record of Proceedings of 6/20/52.
July 31, 1952	Filed Affidavit of Service of Order.
September 11, 1952	Filed Brief in support of Statement of Objections of Drexel & Co., etc.
September 11, 1952	Filed Statement of Objections of Drexel & Co., etc.
September 11, 1952	Filed Designation of Attorney for Drexel & Co. (Letter).
September 11, 1952	Filed Affidavit of J. Beckhardt <i>re</i> objections to Supplemental Application of S.E.C.
September 18, 1952	Filed Statements of Objections of C. A. Johnson and Co., Biewend, etc.
September 23, 1952	Filed stipulation and order extending time of C. A. Johnson, etc., to file statement of objections, etc.
October 17, 1952	Filed Supporting Memorandum of S.E.C. <i>re</i> Supplemental Application for order approving Allowances, etc.
October 17, 1952	Filed copy of S.E.C. Memorandum.
October 22, 1952	Filed Transcript of Record of Proceedings of 10/2/52.
(R-1, 2)	
December 23, 1952	Filed Opinion #20,235. All of the objections are overruled—Clancy, <i>J.</i>
February 18, 1953	Filed certificate of service of order of S.E.C.
April 10, 1953	Filed Notice of Appeal by Drexel & Co., a fee claimant. Mailed copy to S.E.C., Electric Power & Light Corporation and Electric Bond and Share Company 4/10/53.

April 10, 1953	Filed Appeal Bond (Drexel & Co.)— American Surety Co.
April 10, 1953	Filed Notice of Appeal by Christian A. Johnson, Cameron Biewend, etc. (Mailed copy to Cahill, Gordon, Zachry & Reindel; Drinker Biddle & Reath; S.E.C.; and J. Beckhardt.
April 10, 1953	Filed Appeal Bond (Johnson, etc.)— Seaboard Surety.
May 15, 1953	Filed Consent and order extending time to file record on appeal to 6/18/53 (Drexel & Co.—Clancy, J.)
May 20, 1953	Affidavit and order extending time to file appeal record to 6/18/53 (John- son & Biewend, etc.—Wenfield, J.) Mailed Notice of Entry 5/21/53.

(R-1, 67)      **PLAN FOR COMPLIANCE**

By

**ELECTRIC POWER & LIGHT CORPORATION**With Section 11 of the Public Utility Holding  
Company Act of 1935**Introductory Statement.\***

This PLAN is proposed by Electric Power & Light Corporation under Section 11(e) of the Public Utility Holding Company Act of 1935 for the purpose of bringing ELECTRIC and its system into conformity with the provisions of that ACT.

This PLAN has been filed with the Securities and Exchange Commission in the proceeding before it entitled *In the Matter of Electric Power & Light Corporation*, S. E. C. File No. 54-139. The compromise plan dated July 1, 1946, which was filed in that proceeding by ELECTRIC and its parent company, Electric Bond and Share Company, is superseded by the present PLAN.

\* The following is a glossary of abbreviated terminology which will be used for convenience in this PLAN:

ACT	Public Utility Holding Company Act of 1935.
ARKANSAS	Arkansas Power & Light Company.
BOND AND SHARE	Electric Bond and Share Company.
COMMISSION	Securities and Exchange Commission.
ELECTRIC	Electric Power & Light Corporation.
EXCHANGE AGENT	The agent or agents, collectively, to be appointed by ELECTRIC for purposes of Parts III and IV hereof.
GENTILLY	Gentilly Development Company, Inc.
LOUISIANA	Louisiana Power & Light Company.
MISSISSIPPI	Mississippi Power & Light Company.
NEW COMPANY	The corporation to be organized pursuant to Part I of the PLAN for the purpose of taking over ELECTRIC's holdings in ARKANSAS, LOUISIANA, MISSISSIPPI, NEW ORLEANS, and GENTILLY.
NEW ORLEANS	New Orleans Public Service Inc.
PLAN	This Plan for Compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act of 1935.
UNITED	United Gas Corporation.

This PLAN has been arrived at in the light of extensive conferences with representative holders of substantial amounts of securities of the various classes of ELECTRIC, and embodies a compromise to which representative holders of the various classes have agreed.

(R-1, 68)

### **Summary of Plan.**

This PLAN proposes:

- (1) the transfer to the NEW COMPANY to be organized by ELECTRIC of cash and all the securities owned by ELECTRIC in ARKANSAS, LOUISIANA, MISSISSIPPI, NEW ORLEANS, and GENTILLY;
- (2) the compromise, settlement and discharge of the claims and counterclaims between BOND AND SHARE, its wholly-owned subsidiaries, Ebasco Services Incorporated and Phoenix Engineering Corporation, and the security holders of BOND AND SHARE, on the one hand, and ELECTRIC and its present and certain past subsidiaries and their respective security holders, on the other hand;
- (3) the retirement of all the outstanding Preferred Stock and Second Preferred Stock of ELECTRIC, including rights to all accumulated and unpaid dividends thereon, by the exchange of such Preferred Stock and Second Preferred Stock for Common Stock of the NEW COMPANY and of UNITED on the following bases:
  - (i) for each share of \$7 Preferred Stock of ELECTRIC, 4.5 shares of Common Stock of the NEW COMPANY and 6.5 shares of Common Stock of UNITED;
  - (ii) for each share of \$6 Preferred Stock of ELECTRIC, 4.1 shares of Common Stock of the NEW COMPANY and 5.9 shares of Common Stock of UNITED; and



- (iii) for each share of Second Preferred Stock of ELECTRIC, 4.3 shares of Common Stock of the NEW COMPANY and 6.25 shares of Common Stock of UNITED; and
- (4) the liquidation and dissolution of ELECTRIC, and the distribution of its remaining assets among its common stockholders and option warrant holders as hereinafter provided.

### **Capitalization of Electric.**

The outstanding securities of ELECTRIC are as follows:

\$7 Preferred Stock.....	514,162	shares*
\$6 Preferred Stock.....	255,430 $\frac{2}{3}$	shares†
Second Preferred Stock, Series A (\$7)	74,814	shares
Common Stock .....	3,453,787	shares‡

The capital stock liability of ELECTRIC is not segregated as between classes of stock, but all the issued stock of all classes is stated at an aggregate figure of \$155,044,139.40.

The \$7 Preferred Stock, the \$6 Preferred Stock and the Common Stock are entitled to one vote per share. The Second Preferred Stock has no voting right. All classes of preferred stock bear cumulative dividends and are entitled to \$100 a share upon liquidation. The \$7 Preferred Stock and the \$6 Preferred Stock rank equally. The contractual redemption prices provided in the Certificate of Organization with respect to the preferred stocks are \$110 per share for the \$7 Preferred Stock and the \$6 Preferred Stock, and \$105 per share for the Second Preferred Stock, plus accumulated and unpaid dividends in each instance.

As of March 31, 1948, accumulated and unpaid dividends on the preferred stocks are as follows:

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\* Excludes 973 reacquired shares.

† Including scrip equivalent to 2 $\frac{2}{3}$  shares.

‡ Excludes 902 reacquired shares.

	Total	Per Share
\$7 Preferred Stock.....	\$46,128,900.77	\$ 89.71 <sup>2</sup> / <sub>3</sub>
\$6 Preferred Stock.....	19,642,413.20	76.90
Second Preferred Stock, Series		
A (\$7) .....	8,379,168.00	112.00

(R1-, 69) A dividend equal to the amount payable for a quarter year on the \$7 Preferred Stock and \$6 Preferred Stock has been declared in each quarter-yearly period commencing with the first quarter of 1946. It is the present intention of the management of ELECTRIC to continue to declare and pay quarterly dividends on the \$7 Preferred Stock and the \$6 Preferred Stock, so that until the consummation date specified in Part III of this PLAN, the accumulated and unpaid dividends on those classes of stock at the end of any quarter will remain at the amounts shown above.

In addition, ELECTRIC has outstanding option warrants entitling the holders, without limitation as to time, to purchase 534,754 shares of Common Stock at \$25 a share in cash. Each share of Second Preferred Stock surrendered with option warrants for four shares of Common Stock is, under the terms of such warrants, to be accepted in lieu of cash in payment for four shares of Common Stock.

BOND AND SHARE, the parent company of ELECTRIC, owns 485 shares of \$7 Preferred Stock, 13,905 shares (18.6%) of Second Preferred Stock, 1,976,638 shares (57.2%) of Common Stock, and option warrants for the purchase of 393,408 shares of Common Stock of ELECTRIC. These holdings of BOND AND SHARE include securities representing 46.8% of the total outstanding voting power of ELECTRIC. BOND AND SHARE OWNS no securities in the subsidiaries of ELECTRIC.

### Holdings of Electric.

The present principal holdings of ELECTRIC are as follows:

	Common Stock	
	Shares Owned by Electric	Per Cent of Total Outstanding
ARKANSAS .....	1,460,000	100.0%
LOUISIANA .....	2,300,000	100.0%
MISSISSIPPI .....	950,000	100.0%
NEW ORLEANS .....	906,671	95.2%
UNITED .....	10,108,101	94.9%

### **Properties Controlled by Electric.**

The principal properties presently controlled by ELECTRIC fall into two groups:

The southern electric system, consisting of ARKANSAS and subsidiaries, LOUISIANA, MISSISSIPPI and NEW ORLEANS.

The UNITED system, consisting of UNITED and its subsidiaries.

ELECTRIC also owns all the outstanding stock of Gentilly Development Company, Inc., a corporation holding certain real estate in New Orleans.

### **The Southern Electric System.**

The companies in the southern electric system operate an integrated electric system and gas and transportation properties in the states of Arkansas, Louisiana and Mississippi. The area served has a combined population of approximately 2,500,000. Electric service is rendered to 525,000 customers and gas service to 208,000 customers. The companies render one or more services in 902 communities. Of the 1947 consolidated revenues, 65.7% was derived from electric service, 17.6% from the distribution of natural gas, and 16.7% from transportation service. For over seventeen years these electric properties have been physically operated as an integrated and coordinated electric utility system, in such manner as to promote maximum efficiency and economy. The business of distributing and

selling electric energy is under the administration of the separate companies serving their respective areas, and thus preserves independence of local management and effectiveness of local regulation. The over-all problems of the system, including engineering, power supply and power transmission, are administered jointly in the most efficient, economical and beneficial manner for all the companies.

### **(R-1, 70) The United System.**

UNITED and its subsidiaries operate in the Gulf South area and are engaged principally in the production, purchase, gathering, transportation, distribution and sale of natural gas. The system serves parts of Texas, Louisiana, and Mississippi, and also extends to Mobile, Alabama, Pensacola, Florida, and to the international boundary at Roma, Texas, where gas is sold to a Mexican natural gas pipe line company. Subsidiaries of UNITED are also engaged in the production, gathering and sale of crude oil; the recovery of natural gasoline and other liquid hydrocarbons through natural gasoline plants, cycling plants and by condensation, and the sale thereof at wholesale; and the production and sale of sulphur. UNITED also owns approximately 47% of the outstanding capital stock of Mississippi River Fuel Corporation, a pipe-line company, and has subscribed to approximately 10% of the common stock of Carthage Hydrocol Inc., which is constructing one of the first commercial plants in the United States for the manufacture of gasoline and resultant by-products under the "Hydrocol Process."

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## **STEPS IN EFFECTUATING PLAN.**

### **I.**

#### **Formation of New Company and Transfer of Assets to It.**

ELECTRIC will cause the NEW COMPANY to be organized and, as part of the consideration for the issuance to ELEC-

TRIC of 4,400,000 shares of Common Stock of the NEW COMPANY, ELECTRIC will transfer to the NEW COMPANY the following shares of common stock:

ARKANSAS .....	1,460,000 shares
LOUISIANA .....	2,300,000 shares
MISSISSIPPI .....	950,000 shares
NEW ORLEANS .....	906,671 shares
GENTILLY .....	1,478 shares

As the remainder of the consideration for such 4,400,000 shares of Common Stock of the NEW COMPANY, ELECTRIC will transfer to the NEW COMPANY cash working capital in the amount of \$2,000,000 and in addition a sum of \$8,000,000, which latter sum may be either in the form of cash or in the form of additional investments made between the date of this PLAN and the consummation date of this Part I in the common stocks of one or more of the subsidiaries to be turned over to the NEW COMPANY hereunder. ELECTRIC may also from time to time invest funds in addition to the \$8,000,000 referred to above in the Common Stocks of such subsidiaries, and on the consummation date of this Part I, ELECTRIC may invest funds, including funds then received by it under Part II of this PLAN, in common stock of the NEW COMPANY. In the event of any such additional investment or investments by ELECTRIC as referred to in the last preceding sentence, ELECTRIC shall receive in consideration thereof Common Stock of the NEW COMPANY in addition to the 4,400,000 shares referred to above, at a price per share to be proposed by ELECTRIC in a separate application and approved by the COMMISSION. The shares of Common Stock of the NEW COMPANY to be issued initially to ELECTRIC as provided above will constitute all the securities of the NEW COMPANY to be outstanding at the consummation of Part III of this PLAN.

ELECTRIC will also turn over to the NEW COMPANY all its office furniture, equipment and supplies, including its files.

The NEW COMPANY, upon its organization, will do or cause to be done any and all things required on its part to consummate this PLAN, and will, if and to the extent necessary, join in this PLAN. ELECTRIC will cause the NEW COMPANY to register as a holding company under the ACT.

The consummation date of this Part I will be the same as the consummation date specified pursuant to Part III.

(R-1, 71)

## II.

**Compromise, Settlement and Discharge of Claims and Counterclaims, Between Electric, Its Subsidiaries and Their Respective Security Holders, on the One Hand, and Bond and Share, Its Wholly-Owned Subsidiaries and Security Holders, on the Other.**

In proceedings heretofore initiated by the COMMISSION under Section 11(b)(2) of the ACT (S. E. C. File No. 59-12) against BOND AND SHARE, ELECTRIC and others, issues were raised and investigated by the staff of the COMMISSION with respect to the corporate relationships between BOND AND SHARE and its wholly-owned subsidiaries and ELECTRIC and its present and certain former subsidiaries, including the following: the validity in whole or in part of payments to BOND AND SHARE and its wholly-owned subsidiaries under service, engineering and construction contracts with ELECTRIC and its subsidiaries, including certain former subsidiaries; alleged acts of mismanagement by BOND AND SHARE and such wholly-owned subsidiaries in the position of control over, and relationship with, ELECTRIC and its subsidiaries; questions of financial transactions; and questions of whether BOND AND SHARE in its position of control in the capacity of promoter or otherwise violated its fiduciary duties to ELECTRIC and its subsidiaries and certain former subsidiaries and their respective security holders as such.

In addition to the proceedings before the COMMISSION, several actions were commenced on the dates hereinafter



set forth in the New York and Federal courts by stockholders of ELECTRIC against BOND AND SHARE and others, raising some of the same issues which were investigated by the staff of the COMMISSION in the Section 11(b)(2) proceedings, as well as other issues, including alleged acts of mismanagement on the part of BOND AND SHARE and breaches by it of its fiduciary duty to ELECTRIC and its subsidiaries by virtue of the position of domination and control occupied by BOND AND SHARE, and the position of the investment of BOND AND SHARE in ELECTRIC. The respondents in the proceedings initiated by the Commission included all the corporate defendants in the State and Federal court actions listed below:

Title of Action	Court	Date Commenced Against Bond and Share
A. Shell Lezberg, Plaintiff, v. C. E. Groesbeck et al., Defendant.	District Court of the United States, Southern District of New York	June 10, 1941
Rebecca Y. Rosenblatt, Plaintiff, v. H. L. Dickerson et al., Defendants	District Court of the United States, Southern District of New York	December 31, 1941
Helen Katz, Plaintiff, v. Ernest Tracy et al., Defendants	Supreme Court of the State of New York, New York County	January 7, 1942
Jennie Britton, Plaintiff, v. Electric Bond and Share Company et al., Defendants	Supreme Court of the State of New York, Kings County	April 12, 1945
Selma Goodman, Plaintiff, v. H. F. Sanders et al., Defendants	District Court of the United States, Southern District of New York	May 16, 1945
John E. Carr, Plaintiff, v. Electric Power and Light Company et al., Defendants	District Court of the United States, Southern District of New York	May 23, 1945
John E. Carr, Plaintiff, v. Electric Power and Light Company et al., Defendants	Supreme Court of the State of New York, New York County	January 10, 1946*

\* Date commenced against Elasco Services Incorporated.

In the plan of reorganization of Utah Power & Light Company, a former subsidiary of ELECTRIC, which was approved by the Commission on November 13, 1945 (Holding Company Act Release No. 6212) and by the United

States District Court for the District of Utah on January 14, 1946, and which has been consummated, Utah Power & Light Company assigned to ELECTRIC any and all claims which Utah Power & Light Company or its subsidiaries may have had against BOND AND SHARE and its wholly-owned subsidiaries.

Copies of the complaints in all the actions described above have been filed with the COMMISSION. Reference is made to such complaints and to the record in the proceedings above referred to instituted by the COMMISSION. Such complaints and the record in such proceedings are hereby incorporated by reference.

(R-1, 72) In the light of the provisions of the Act, of the various charges and claims made, the record in the proceedings before the COMMISSION above referred to, and the complaints in the stockholders' actions described above, the managements of ELECTRIC and of BOND AND SHARE have agreed upon the compromise embodied in this Part II of the PLAN as a means of effectuating a settlement and complete discharge of all claims of either of said parties, their subsidiaries and certain former subsidiaries and their respective security holders as such, against the other, in any way related to, arising out of or involving the conduct or management of ELECTRIC or its subsidiaries, or its or their predecessors, to the date of entry of a court enforcement order under Section 11(e) of the Act with respect to this Part II of the PLAN, including, but without being limited to, the claims specifically mentioned or referred to above which are involved in the proceedings before the COMMISSION hereinabove mentioned or which form the alleged bases for causes of action in one or more of the stockholders' derivative actions enumerated above and any other action which has been commenced or may be commenced against BOND AND SHARE and its directors or ELECTRIC and its directors arising out of or related to any transactions or relationships between BOND AND SHARE and its wholly-owned

subsidiaries on the one hand and ELECTRIC and its subsidiaries on the other hand. The approval of this Part II of the COMMISSION, its enforcement by the court and its consummation shall have the effect of a complete compromise, settlement and discharge of all such claims.

Such compromise shall be effected by the payment in cash to ELECTRIC by BOND AND SHARE of the sum of \$2,200,000, and such cash shall be accepted by ELECTRIC in full settlement and complete discharge of any and all claims of ELECTRIC and its present and former subsidiaries and their respective security holders as such against BOND AND SHARE and its wholly-owned subsidiaries and its security holders.

In connection with the effectuation of this compromise and settlement, the following present and former subsidiaries of ELECTRIC are parties to the proceedings before the COMMISSION and will be parties to the proceedings before the United States District Court with respect to this Part II of the PLAN: ARKANSAS, Dallas Power & Light Company (former subsidiary), Idaho Power Company (former subsidiary), LOUISIANA, MISSISSIPPI, and NEW ORLEANS. ELECTRIC has agreed with its present and former subsidiaries that they will receive the following amounts in cash out of said \$2,200,000, in full settlement and complete discharge of any rights which said subsidiaries may have or assert with respect to any such claims:

ARKANSAS .....	\$ 32,500
LOUISIANA .....	17,500
MISSISSIPPI .....	20,000
NEW ORLEANS .....	183,261
Dallas Power & Light Company..	152,255
Idaho Power Company.....	20,000

It is the purpose and intent of this Part II of the PLAN and of such compromise and settlement, that upon consummation of this Part II, all claims of any of the

parties to this proceeding or their subsidiaries, including former subsidiaries or their respective security holders as such, against any of the parties to such proceeding in any way related to, arising out of or involving the organization, conduct or management of ELECTRIC or its subsidiaries, or its or their predecessors, whether or not enumerated herein, shall be completely compromised, settled and discharged.

The COMMISSION is hereby petitioned, if it approves this Part II, to approve the payment of an aggregate of not exceeding \$175,000, upon receipt by ELECTRIC of said \$2,200,000, to the plaintiffs, their attorneys, their accountants and any other persons employed or retained by said plaintiffs in the stockholders' actions referred to above, in full settlement and satisfaction of all amounts which said plaintiffs, their attorneys, their accountants and such other persons are or may be entitled to receive by way of reimbursement of disbursements or as allowances for legal or professional services or otherwise.

The consummation date of this Part II shall be the same as the consummation date specified pursuant to Part III.

(R-1, 73)

### **III.**

#### **Retirement of Preferred Stock and Second Preferred Stock of Electric.**

The \$7 Preferred Stock, \$6 Preferred Stock and Second Preferred Stock, including all rights to accumulated and unpaid dividends, will be retired by exchanges on the following bases:

##### **\$7 Preferred Stock:**

For each share of \$7 Preferred Stock of ELECTRIC, the holders will receive 4.5 shares of Common Stock of the NEW COMPANY and 6.5 shares of Common Stock of UNITED.

**\$6 Preferred Stock:**

For each share of \$6 Preferred Stock of ELECTRIC, the holder will receive 4.1 shares of Common Stock of the NEW COMPANY and 5.9 shares of Common Stock of UNITED.

**Second Preferred Stock, Series A (\$7):**

For each share of Second Preferred Stock of ELECTRIC, the holder will receive 4.3 shares of Common Stock of the NEW COMPANY and 6.25 shares of Common Stock of UNITED.

On or before the consummation date hereinafter specified, ELECTRIC will cause to be deposited with the EXCHANGE AGENT 3,682,695 shares of Common Stock of the NEW COMPANY and 5,316,682 shares of Common Stock of UNITED, which are the numbers of shares of such stocks required for the retirement of all the Preferred Stock and Second Preferred Stock of ELECTRIC on the bases specified above. The shares of Common Stock of the NEW COMPANY so deposited with the EXCHANGE AGENT will be registered in the name of the NEW COMPANY and will be endorsed in blank by it; and the shares of Common Stock of UNITED so deposited with the EXCHANGE AGENT will be registered in the name of UNITED and will be endorsed in blank by it. On and after the consummation date, holders of certificates for \$7 Preferred Stock, \$6 Preferred Stock and Second Preferred Stock of ELECTRIC shall no longer be holders of said stock but shall be holders of Common Stock of the NEW COMPANY and Common Stock of UNITED in amounts determinable by application of the rates of exchange set forth above. On and after the consummation date, the holders of said certificates shall cease to have any rights as stockholders of ELECTRIC, and said certificates shall entitle them only to receive certificates for Common Stock of the NEW COMPANY and Common Stock of UNITED upon presentation and surrender of

their certificates for \$7 Preferred Stock, \$6 Preferred Stock and Second Preferred Stock of ELECTRIC, at the office of the EXCHANGE AGENT.

No certificates for fractional shares of Common Stock of the NEW COMPANY or of UNITED will be issued or distributed, but in lieu thereof scrip will be issued. Such scrip will not entitle the holders thereof to dividends, voting rights, or any other rights of stockholders. Except as hereinafter provided, such scrip, when combined in lots aggregating one or more full shares, may be exchanged for the full shares represented thereby. Arrangements will be made whereby holders of scrip representing less than one full share may either sell the same or purchase additional scrip sufficient to equal a full share or shares, without the payment of any commission.

Until physical exchange of certificates shall have been effected hereunder, no stockholder of ELECTRIC or holder of scrip issued hereunder shall be entitled to receive any dividends declared on shares of stock of the NEW COMPANY or of UNITED to be delivered by the EXCHANGE AGENT hereunder. Whenever any dividend is declared by the NEW COMPANY on shares of its Common Stock, the declaration will include a declaration of dividends on all shares registered in the name of the NEW COMPANY as provided above, but no payment of such dividends will be made either by the NEW COMPANY or its paying agent until such shares shall have been delivered hereunder by the EXCHANGE AGENT to the person entitled thereto, whereupon such person shall be entitled to receive from the NEW COMPANY or its paying agent an amount equal to dividends (less the amount of taxes, if any, which may have been imposed or paid thereon) which shall theretofore have been declared by the NEW COMPANY between the consummation date of this Part III and the date of the receipt of the certificates for such (R-1, 74) shares by such person, except dividends the payment of which is provided for in the second succeeding sentence



hereof. Whenever any dividend is declared by UNITED on shares of its Common Stock, the declaration will include a declaration of dividends on all shares registered in the name of UNITED as provided above, but no payment of such dividends will be made either by UNITED or its paying agent until such shares shall have been delivered hereunder by the EXCHANGE AGENT to the person entitled thereto, whereupon such person shall be entitled to receive from UNITED or its paying agent an amount equal to dividends (less the amount of taxes, if any, which may have been imposed or paid thereon) which shall theretofore have been declared by UNITED between the consummation date of this Part III and the date of the receipt of the certificates for such shares by such person, except dividends the payment of which is provided for in the next succeeding sentence hereof. In the event that at the time of the receipt of such shares of Common Stock of the NEW COMPANY or of UNITED by any such person there shall have been a dividend declared by the NEW COMPANY or by UNITED for payment on a date after such receipt to stockholders of record on a date prior to such receipt, the person receiving such shares shall be entitled to receive from the EXCHANGE AGENT as soon as practicable after the dividend payment date the amount of such dividend applicable to his shares the same as if such shares had been registered in his name on the record date for such dividend. Persons who combine scrip into full share amounts and exchange such scrip for shares hereunder shall have the same rights with respect to dividends as are hereby accorded to persons exchanging certificates for shares of Preferred Stock or Second Preferred Stock of ELECTRIC.

As soon as practicable after the expiration of two years after the consummation date of this Part III, the EXCHANGE AGENT shall sell all shares of Common Stock of the NEW COMPANY and of UNITED reserved for delivery upon the exchange of scrip and then remaining unex-

changed, and in addition a sufficient number of shares to provide for the fractional shares which will be required upon presentation of each certificate for Preferred Stock and Second Preferred Stock of ELECTRIC then remaining unexchanged. After such sale, no holder of scrip shall have any rights, and no holder of any such unexchanged certificate shall have any rights with respect to fractional shares, except in each case to receive, without interest, his pro rata share of the net proceeds of such sale after deducting therefrom the expenses thereof and the amount of taxes, if any, which may have been imposed or paid thereon.

Not more than sixty days and not less than thirty days prior to the expiration of each of the first five years after the consummation date of this Part III, the NEW COMPANY and UNITED will publish or cause to be published in the Wall Street Journal or some other newspaper having a substantial circulation in the financial community, a notice that the rights of the holders of unexchanged stock certificates and scrip will terminate and expire as hereinafter provided, and will mail or cause to be mailed a copy of such notice to each such holder at the last known address of such holder. At the option of the NEW COMPANY and UNITED, such publication and mailing may be carried out by them jointly and at their joint expense. Upon the expiration of five years following the consummation date of this Part III, any shares of Common Stock of the NEW COMPANY and any cash representing the proceeds of the sale of such shares then held by the EXCHANGE AGENT and which theretofore shall not have been claimed by the stockholders or scrip holders entitled thereto, shall be turned over by the EXCHANGE AGENT to the NEW COMPANY; and upon the expiration of said five-year period, any shares of Common Stock of UNITED and any cash representing the proceeds of the sale of such shares then held by the EXCHANGE AGENT and which theretofore shall not have

been claimed by the stockholders or scrip holders entitled thereto, shall be turned over by the EXCHANGE AGENT to UNITED. Any such shares turned over to the NEW COMPANY or UNITED pursuant hereto shall be owned by said companies, respectively, as treasury shares, and all cash so turned over shall be added to their respective corporate funds; and said treasury shares and cash shall be free from any further claim whatever of the holders of the certificates of stock or of scrip for whose account such shares or cash were theretofore held by the EXCHANGE AGENT. All scrip not tendered in accordance with its terms in exchange for stock or cash prior to the expiration of said five-year period, and all certificates for \$7 Preferred Stock, \$6 Preferred Stock and Second Preferred Stock of ELECTRIC not presented hereunder to the EXCHANGE AGENT prior to the expiration of said five-year period shall be null and void and of no further force or effect.

(R-1, 75) The provisions of the last preceding paragraph are subject to the condition that the NEW COMPANY and UNITED, each with respect to the shares of stock and cash of which it is contingent beneficiary hereunder, may extend said five-year period for certain persons in so far as the extension thereof may be deemed necessary or appropriate in carrying out and complying with the purposes and spirit of the Soldiers' and Sailors' Civil Relief Act of 1940, the Trading With the Enemy Act and other similar laws of the United States now or hereafter in effect.

Shares of Common Stock of the NEW COMPANY or of UNITED in the hands of the EXCHANGE AGENT shall not be voted; provided however, that if such shares shall be required in order to constitute a quorum or in order to provide the requisite minimum vote on a particular corporate action pursuant to a statutory provision or a charter or by-law provision, shares in the hands of the EXCHANGE AGENT shall be voted by it as may be directed by ELECTRIC so long as ELECTRIC shall remain in existence.

The consummation date of this Part III will be the day, selected by ELECTRIC, on which this Part III shall be put into effect, and shall be as soon as practicable, after the entry of an appropriate order or decree by a court of competent jurisdiction in which enforcement proceedings under Section II(e) of the ACT shall be brought by the COMMISSION.

ELECTRIC will give notice of the consummation date and of the availability of certificates for shares of Common Stock of the NEW COMPANY and of UNITED pursuant hereto, to all holders of Preferred Stock and Second Preferred Stock of ELECTRIC, by mailing such notice to each such stockholder of record and by publication of such notice in the Wall Street Journal or some other newspaper having a substantial circulation in the financial community, at least ten days before the consummation date.

#### **IV.**

##### **Distribution to Holders of Common Stock and Option Warrants and Dissolution of Electric.**

Upon consummation of Parts I, II, and III of this PLAN, the assets of ELECTRIC will consist of:

- (a) 717,305 shares of Common Stock of the NEW COMPANY, which may be a greater number of shares in the event that ELECTRIC makes certain investments of additional funds in the NEW COMPANY or its subsidiaries as permitted by Part I of this PLAN;
- (b) 4,791,419 shares of Common Stock of UNITED; and
- (c) cash and assets which may be reduced to cash.

Any miscellaneous liabilities then existing will be paid promptly out of cash then on hand or the proceeds of assets then converted into cash.

ELECTRIC will fix a consummation date for this Part IV of the PLAN which shall be not later than sixty days after the consummation date of Part III hereof and on or prior

to said consummation date ELECTRIC will deliver to the EXCHANGE AGENT the securities set forth in clauses (a) and (b) above. On or before the expiration of ten days after the consummation date of Part III of the PLAN, ELECTRIC will publish in the Wall Street Journal or some other newspaper of substantial circulation in the financial community, a notice to all holders of Common Stock of ELECTRIC and all holders of warrants to purchase such Common Stock, which shall

- (a) specify the consummation date of this Part IV;
- (b) notify holders of Common Stock to present their certificates for such stock to the EXCHANGE AGENT on or after such consummation date in exchange for the respective pro rata shares of assets to which the holders of such certificates will be entitled hereunder; and
- (c) notify the holders of warrants for the purchase of Common Stock of ELECTRIC that all warrants not exercised on or before a designated date not more than twenty days prior (R-1, 76) to the consummation date of this Part IV shall thereafter not be subject to exercise but shall be treated for purposes of distribution hereunder as if each such unexercised warrant represented  $\frac{1}{3}$  of a share of Common Stock of ELECTRIC.

Such notice shall likewise be given by mail to each holder of Common Stock and each holder of warrants at the last known address of such holder.

Prior to the date specified in the foregoing notice for the expiration of the right to exercise warrants to purchase Common Stock of ELECTRIC, such warrants may be exercised in accordance with their terms; provided however, that after the consummation date of Part III hereof, no certificates for shares of Second Preferred Stock of ELECTRIC will be accepted in payment for Common Stock of ELECTRIC upon the exercise of such warrants, but such warrants

may be exercised by the payment of cash only. After the specified date for the expiration of the right to exercise such warrants, the holders thereof shall have no further rights as warrant holders but shall be treated as common stockholders of ELECTRIC on the basis of  $\frac{1}{3}$  of a share of Common Stock for each warrant held, and shall have only the rights set forth in the next succeeding paragraph hereof.

On and after the consummation date of this Part IV, holders of certificates for Common Stock of ELECTRIC shall have no rights as stockholders of ELECTRIC and shall cease to be such stockholders; and such stock certificates and warrants for the purchase of Common Stock shall entitle the holders thereof only to receive their pro rata shares of the distribution of assets of ELECTRIC provided for in this Part IV, upon presentation and surrender of such certificates and warrants to the EXCHANGE AGENT hereunder.

No certificates for fractional shares of Common Stock of the NEW COMPANY or of UNITED will be issued or distributed, but in lieu thereof scrip will be issued in denominations not smaller than hundredths of shares, and will be issued to stockholders or warrant holders to the extent of the full hundredths of a share to which they are entitled. After setting aside the numbers of shares of Common Stock of the NEW COMPANY and of UNITED required for distribution of full shares and full hundredths of shares to the holder of each certificate for Common Stock and each holder of a warrant of ELECTRIC, the EXCHANGE AGENT shall sell the remaining shares of Common Stock of the NEW COMPANY and of UNITED pursuant to the directions of ELECTRIC. The net proceeds of such sale will then be available for distribution in accordance with the provisions of this Part IV.

Scrip issued under this Part IV will be in all respects the same as the scrip issued under Part III of this Plan, and the holders thereof will be accorded the same rights and shall be subject to the same treatment as the holders



of said scrip issued under Part III. Concurrently with the sale of shares reserved for issuance against unexchanged scrip under Part III, the EXCHANGE AGENT shall sell the shares reserved for issuance against unexchanged scrip under this Part IV and in addition a sufficient number of shares to provide for fractional shares which will be required upon presentation of each certificate for Common Stock and each option warrant certificate of ELECTRIC then remaining unexchanged. After such sale, no holder of scrip issued hereunder shall have any rights, and no holder of any such unexchanged certificate shall have any rights with respect to fractional shares, except in each case to receive, without interest, the net proceeds of such sale after deducting therefrom the expenses thereof and the amount of taxes, if any, which may have been imposed or paid thereon.

The shares of Common Stock of the NEW COMPANY and of UNITED delivered to the EXCHANGE AGENT under this Part IV shall be registered in the names of those respective companies and endorsed in blank by them respectively as are the shares turned over to the EXCHANGE AGENT under Part III; and the provisions of Part III with respect to the payment of dividends on Common Stock of the NEW COMPANY and of UNITED, and the rights of security holders to receive the same, shall be equally applicable to this Part IV.

At the expiration of five years after the consummation date of this Part IV of the PLAN, Common Stock of the NEW COMPANY and of UNITED, and the cash proceeds of the sale of any such Common (R-1, 77) Stock, shall be turned over to the NEW COMPANY and to UNITED, respectively, in the manner and with the effect provided for with respect to said classes of stock and cash in Part III. Cash on deposit with the EXCHANGE AGENT under this Part IV, which does not represent the proceeds of the sale of shares of Common Stock of UNITED, and which shall remain unclaimed after such five-year period, shall be turned over to

the NEW COMPANY. The provisions of Part III with respect to the publication of annual notices of the termination of the rights of holders of unexchanged securities shall be likewise applicable to this Part IV; and in order that the notice under Part III and this Part IV may be combined, the notice applicable to this Part IV may be given not more than 120 days prior to the expiration of each of the first five years after the consummation date of this Part IV.

In the event that there shall exist any unforeseen tax or other contingent liability on the consummation date of this Part IV or if for any other reason a complete distribution shall then be impracticable or undesirable, ELECTRIC may reserve such amount of cash or other assets, out of the distribution to be made on such consummation date, as in its judgment may be required to satisfy such liability or as may be otherwise required. In such event, a further pro rata distribution will be made, if necessary.

Upon the carrying out of this Part IV, ELECTRIC will be dissolved. In that connection, ELECTRIC may direct the EXCHANGE AGENT with respect to any voting and other disposition of the Common Stock of ELECTRIC represented by certificates in the hands of the EXCHANGE AGENT, as may be necessary or desirable under the law of the State of Maine or other applicable law.

#### **Amendments of Plan.**

Until approved by the COMMISSION, this PLAN may be withdrawn or may be modified or amended in any respect or particular by ELECTRIC. After being approved by the COMMISSION and before being approved by the Court, this PLAN may be withdrawn or may be modified or amended in any respect or particular by ELECTRIC with the approval of the COMMISSION. After being approved by the Court and before this PLAN has been consummated, it may be withdrawn or may be modified or amended in any respect or particular by ELECTRIC with the approval of both the COMMISSION and the Court.

It is a part of the compromise agreement with BOND AND SHARE set forth in Part II hereof that the consummation date of Part II shall not be later than that of Part III. Except as thus limited, the manner and method of carrying out this PLAN, including the steps to be taken and the order in which they are to be taken, are not exclusive. After ten days' notice thereof to the COMMISSION given by ELECTRIC, such steps may be altered and the order in which they are to be carried out may be changed, certain steps may be abandoned, or new and additional steps may be added, and no such alteration, change, abandonment or addition shall be considered an amendment of the PLAN if thereafter the carrying out of the PLAN will result in the consummation of the substance of the transactions contemplated by the PLAN in its present form. No such alteration, change, abandonment or addition will, however, be made until approved by the COMMISSION, if the COMMISSION, within ten days after the mailing to it by ELECTRIC of the foregoing notice, shall have notified ELECTRIC that the COMMISSION deems that such proposed alteration, change, abandonment or addition may constitute a material alteration of the PLAN.

### **Conditions and Reservations.**

The effectuation of this PLAN, or the separate effectuation of any Part thereof, shall be subject to the following conditions and reservations, any of which, however, may be waived by ELECTRIC in its discretion:

1. The PLAN or such Part shall have been found by the COMMISSION to be necessary to effectuate the provisions of subsection (b) of Section 11 of the ACT and to be fair and equitable to the persons affected thereby, and all action requisite to the carrying out and consummation of the PLAN or such Part shall have been approved by order of the COMMISSION.
- (R-1, 78) 2. The COMMISSION, if requested by ELECTRIC, shall have instituted a proceeding in a court of com-

petent jurisdiction pursuant to Section 11(e) of the ACT; and such court shall have entered a decree or order finding the PLAN or such Part to be fair and equitable and necessary or appropriate to effectuate the provisions of Section 11 of the ACT, and shall have taken action to enforce and carry out the terms and provisions of the PLAN or of such Part.

3. The order of the COMMISSION shall recite that the relevant transactions of the PLAN or of such Part are necessary or appropriate to the integration or simplification of the holding-company system of which ELECTRIC is a member and necessary or appropriate to effectuate the provisions of subsection (b) of Section 11 of the ACT, all in accordance with the meaning and requirements of the Internal Revenue Code, as amended, including Section 1808(f) and Supplement R thereof.

4. There shall have been obtained from the United States Treasury Department a closing agreement or ruling or closing agreements or rulings as to the tax consequences to ELECTRIC of the transactions necessary to carry out the PLAN or such Part, and such agreements or rulings shall be satisfactory to ELECTRIC.

5. Any corporate action in connection with the PLAN which may be deemed necessary by counsel for ELECTRIC shall have been carried out in a manner satisfactory to counsel for ELECTRIC.

6. This PLAN presupposes that ELECTRIC will continue to pay dividends on its \$7 Preferred Stock and \$6 Preferred Stock at the rates of \$7 per share and \$6 per share per annum, respectively. In the event that, prior to consummation of Part III, dividends at different rates shall be declared and paid, ELECTRIC will amend the PLAN as may be thereby required.

The statements, opinions, estimates, computations and conclusions contained in this PLAN are submitted solely for

the purpose of assisting the COMMISSION, the Court, the security holders of ELECTRIC and other interested persons, and are not intended for the use or information of prospective purchasers of any securities of ELECTRIC or of any other corporation mentioned in this PLAN.

IN WITNESS WHEREOF, ELECTRIC POWER & LIGHT CORPORATION has executed this document, this 24th day of March, 1948.

ELECTRIC POWER & LIGHT CORPORATION,  
By

E. H. DIXON,  
President.

(R-1, 79) DIRECT EXAMINATION OF EDWARD HOPKINSON, JR., BEFORE THE SECURITIES AND EXCHANGE COMMISSION, APRIL 9, 1946, ON THE MERITS OF THE PLAN FOR DISSOLUTION OF ELECTRIC POWER & LIGHT CORPORATION, Page 1266, line 11, to Page 1273, line 8, of the Official Transcript of Proceedings.

Q. Please state your name and business address.

A. Edward Hopkinson, Jr., Drexel & Co., 15th and Walnut Streets, Philadelphia, Pa.

Q. Have you prepared a memorandum relating to your educational training, business experience and other general qualifications as a witness in this type of proceeding?

A. Yes.

COUNSEL:—Will the reporter kindly copy into the record this memorandum relating to Mr. Hopkinson's qualifications.

MEMORANDUM RE QUALIFICATIONS OF EDWARD HOPKINSON, JR.

Graduate of the University of Pennsylvania—College 1907, Law 1910.

Practising attorney and partner of the law firm of Dickson, Beitler & McCouch, now Drinker, Biddle & Reath,

1910 to 1926, specializing in later years in corporate finance and underwriting and distribution of securities.

Became partner Drexel & Co., July 1, 1926, J. P. Morgan & Co.—Drexel & Co. and affiliated firms January 1, 1928 until April 1, 1940. Became partner present firm of Drexel & Co. on its organization April 1, 1940, which is a member New York and Philadelphia Stock Exchanges, an Associate Member New York Curb Exchange and registered under Investment Advisers Act.

(R-1, 80) Vice-President, Investment Bankers Association of America.

Director, The United Corporation 1930-35; Public Service Corporation of New Jersey, 1930-1938; The United Gas Improvement Company, 1930-1938; Philadelphia Electric Company, 1932-1939.

Director and member of Finance Committee, Insurance Company of North America, The Philadelphia Saving Fund Society, The Pennsylvania Fire Insurance Company, and University of Pennsylvania.

Chairman of the Reorganization Managers named in Plan of Reorganization of The Baldwin Locomotive Works filed on August 8, 1935, in Section 77B Proceedings in the United States District Court for the Eastern District of Pennsylvania.

Reorganization Manager by appointment of United States District Court for the Eastern District of Pennsylvania on December 6, 1937 to formulate and present to security holders plan for reorganization of Philadelphia Rapid Transit Company and its subsidiaries and lesser companies involving 35 publicly held issues of stocks and bonds, which successfully culminated in the organization of Philadelphia Transportation Company on January 1, 1940, the Plan being affirmatively assented to by holders of from 70.3% to 100% of the several security issues involved.

Appointed by United States District Court for the Eastern District of Pennsylvania on April 22, 1942, one



of three "investment experts to determine the values and prospects of the Pennroad Corporation investments in railroad securities", in (R-1, 81) suit of IONE M. OVERFIELD AND GRACE STEIN WEIGLE ET AL V. THE PENNROAD CORPORATION.

Acted as Financial Adviser to United Gas Improvement Company in connection with the formulation and presentation of its plan for retirement of its Preferred Stock and the distribution to its Common Stockholders of its holdings of the Common Stock of Philadelphia Electric Company and Public Service Corporation of New Jersey.

Chairman of the Committee for the Commonwealth & Southern Corporation Preferred Stock, which negotiated the Amended Plan to change the capitalization of that corporation into one class of stock. This Amended Plan, substantially as filed, has been recommended by the staff of the Public Utility Division of the Securities and Exchange Commission and has been approved by the Commission.

Acted as Financial Adviser for Niagara Hudson Power Corporation in the proceedings for the recapitalization of Buffalo, Niagara and Eastern Power Corporation, and testified in opposition to the plan filed by Buffalo, Niagara and Eastern Power Corporation and in support of the plan filed by Niagara Hudson Power Corporation in the proceedings before the Securities and Exchange Commission.

Acted as expert financial witness for United Light & Power and American Light & Traction in proceedings for valuation of non-callable preferred stock before the Securities and Exchange Commission.

Acted as expert financial witness for United Gas Improvement (R-1, 82) Company in connection with its common stock exchange offer, January, 1946.

Acting as Financial Adviser to The United Corporation in connection with its plan of simplifying its own capital structure as well as in the proceedings for the recapitalization of Columbia Gas & Electric Corporation.



Acting as Financial Adviser to the Preferred Stockholders Committee of New England Gas and Electric Association in recapitalization proceedings affecting that company now pending before the Securities and Exchange Commission.

Acting as Financial Adviser to Electric Bond and Share Company in its own recapitalization proceedings as well as in the proceedings for the recapitalization of Electric Power & Light Corporation and its subsidiaries and American Power & Light Company.

Acting as Financial Adviser to Koppers Company in connection with recapitalization of Eastern Gas & Fuel Corporation, now pending before the Securities and Exchange Commission.

Acting as consultant and expert financial witness for Consolidated Edison Company of New York in merger proceedings involving valuations of dissenting Preferred and Common Stocks of Brooklyn Edison Company, Inc. and Common Stock of New York and Queens Electric Light and Power Company, before Board of Appraisers in the Supreme Court of the State of New York.

In addition to the companies referred to above, other electric utility companies with which I have been familiar through various financial services include Connecticut Light & (R-1, 83) Power Company, Delaware Power & Light Company, Luzerne County Gas & Electric Company, Philadelphia Electric Company and Public Service Corporation of New Jersey.

MR. EDWARD HOPKINSON, JR.

*Investment Bankers Association of America*

Member, Legislation Committee, October 1926 to 1929

Chairman, State and Local Taxation Committee 1929-1931

Chairman, Federal Taxation Committee 1931-1933

Member, Federal Taxation Committee 1933-1934

Member, Conference Committee to study the problems of post-war readjustments, December 1943 to date  
Delegate to National Post-War Conference, February 1944 to date  
Member, Federal Legislation Committee, 1943-44;  
- 1945-46

*Philadelphia Chamber of Commerce*

Member, Committee on Taxation and Public Expenditures, 1927 to date  
Member Executive Committee, 1932 to date, and Chairman of Executive Committee, October 1942 to February 1945  
Director, 1932 to date

*Pennsylvania State Chamber of Commerce*

Director, March 1942 to date  
Vice-President, June 1943 to date  
Member, Executive Committee, April 1942 to date  
Member, Tax Advisory Committee, Group 1 (appointed January 11, 1944)

*Committee for Economic Development of Philadelphia County*

Member, Advisory Committee since June 12, 1943

Q. Has your time been predominantly occupied with any particular phase of your present firm's business and, if so, what?

(R-1, 84) A. As the senior partner of Drexel & Co. I naturally have had responsibility for all phases of my firm's business including the origination of security issues, participation in syndicates and the evaluation of securities so as to render advice to our clients. Recently, as shown in the memorandum just submitted, I have spent a considerable part of my time as adviser to various utility holding and operating companies on special financial problems, including Public Utility Holding Company Act Sec-

tion 11 proceedings involving exchange of securities and one-stock plans and similar matters.

Q. Then, you have had frequent occasion to evaluate bonds, preferred stocks and common stocks of public utility companies?

A. In the regular course of my firm's business and in the proceedings I have mentioned, a large part of my work has involved such evaluations.

Q. Does your previous answer include the bonds, preferred stocks and common stocks of natural gas companies?

A. Yes, I frequently have had occasion to evaluate the bonds, preferred stocks and common stocks of natural gas companies as well as other types of utility companies.

Q. From your memorandum it appears that you have been employed in connection with several proceedings or reorganizations before the Securities and Exchange Commission pursuant to Section 11 of the Public Utility Holding Company Act.

A. Yes, I have acted as financial adviser or financial witness in a number of such proceedings and have testified (K-1, 85) before the Securities and Exchange Commission in several of them.

Q. Are you familiar with the Plan of Electric Power & Light Corporation to retire certain of its outstanding preferred stocks by the exchange of the common stock of United Gas Corporation which is the subject of this proceeding?

A. Yes.

Q. Are you familiar with the various stocks of Electric Power & Light Corporation and the common stock of United Gas which are involved in these proceedings?

A. Yes, I have familiarized myself with the capitalization of Electric Power & Light Corporation and with the rights and claims of the various securities of that company. I have also familiarized myself with the capitalization and earnings of the electric subsidiaries of that company and with the capital structure and earnings of United Gas Corporation and its subsidiaries.

(R-1, 210)

UNITED STATES OF AMERICA

SECURITIES AND EXCHANGE COMMISSION

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IN THE MATTER*of*

ELECTRIC POWER &amp; LIGHT CORPORATION

File No. 54-139.

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IN THE MATTER*of*

ELECTRIC BOND AND SHARE COMPANY,

ELECTRIC POWER & LIGHT CORPORATION, *et al.*File No. 59-12.

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AMENDMENT OF PLAN FOR COMPLIANCE BY ELECTRIC POWER & LIGHT CORPORATION WITH SECTION 11 OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, DATED MARCH 24, 1948.

Electric Power & Light Corporation hereby amends its Plan for Compliance with Section 11 of the Public Utility Holding Company Act of 1935, dated March 24, 1948 (hereinafter called the PLAN) by adding thereto the following provisions:

1. In addition to the shares of Common Stock of the NEW COMPANY and of UNITED which each holder of Second Preferred Stock, Series A (\$7), is to receive pursuant to Part III of the PLAN, such holder will also receive a sum in cash to be computed at the rate of \$7 per year per share of Second Preferred Stock for the period beginning with July 1, 1948, and ending with the end of the last full calendar quarter preceding the consummation date of Part III of the PLAN. ELECTRIC will also cause to be deposited with the EXCHANGE AGENT a sum in cash sufficient

to make such payment to all holders of Second Preferred Stock at the same time that it causes to be deposited with the EXCHANGE AGENT Common Stock of the NEW COMPANY and of UNITED pursuant to Part III of the PLAN. Any cash deposited with the EXCHANGE AGENT pursuant to this paragraph which shall not have been claimed by Second Preferred Stockholders entitled thereto upon the expiration of five years following the consummation date of Part III of the PLAN, shall be treated in the same manner, under Part III, as cash then remaining unclaimed and representing the proceeds of the sale of Common Stock of the NEW COMPANY.

2. Subject to the right of ELECTRIC to seek judicial review of any order issued by the COMMISSION with respect to fees or expenses to be paid by ELECTRIC in the instant proceeding, ELECTRIC acknowledges the jurisdiction of the COMMISSION to pass upon fees and expenses of parties and persons who have been granted participation herein and their counsel, agents and employees, and agrees to pay such fees and expenses as the COMMISSION shall find it appropriate for ELECTRIC to pay and as shall have been approved for payment by ELECTRIC by order of the COMMISSION or, in the event of judicial review, by final judgment of the court.

3. Upon the initial distribution of securities to the common stockholders of ELECTRIC as provided in Part IV of the PLAN, all interlocking relationships between UNITED and the NEW COMPANY arising out of common directors or officers will be terminated.

4. Immediately upon consummation of Part III of the PLAN, the NEW COMPANY will apply for the listing of its Common Stock on a national securities exchange.

Date: March 3, 1949.

ELECTRIC POWER & LIGHT CORPORATION  
By

E. H. DIXON  
President.

36a

*Order Approving Plan.*

(R-3, 74) For IMMEDIATE Release, Monday,  
March 7, 1949

SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C.

HOLDING COMPANY ACT OF 1935  
Release No. 8906

UNITED STATES OF AMERICA

BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 7th day of March, A. D., 1949.

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*In the Matter of*

ELECTRIC POWER & LIGHT CORPORATION

File No. 54-139

(Public Utility Holding Company Act  
of 1935)

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*In the Matter of*

ELECTRIC BOND AND SHARE COMPANY  
ELECTRIC POWER & LIGHT CORPORATION,  
ET AL., Respondents

File No. 59-12

(Public Utility Holding Company Act  
of 1935)

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*In the Matter of*

ELECTRIC BOND AND SHARE COMPANY

File No. 70-1806

(Public Utility Holding Company Act  
of 1935)

Order approving  
Plan filed under  
Section 11 (e)

Electric Power & Light Corporation ("Electric"), a registered holding company and a subsidiary of Electric Bond and Share Company ("Bond and Share"), also a registered holding company, having filed an application pursuant to Section 11 (e) of the Public Utility Holding Company Act of 1935 ("the Act") and other applicable provisions of the Act for approval of a plan, and amendments thereto ("the Plan"), providing, among other things, for the dissolution of Electric and for its liquidation through the distribution of its assets among its security holders;

Bond and Share having filed an application-declaration respecting its acquisition and disposition of the securities which it is to receive under the Plan, as amended, and its payment to Electric of \$2,200,000 in settlement of certain claims asserted by the latter;

Public hearings having been duly held after appropriate notice, at which hearings all interested persons were afforded opportunity to be heard;

(R-3, 75) Electric having requested the Commission to enter an order reciting that the transactions proposed in the Plan are necessary to effectuate the provisions of Section 11 (b) of the Act and are fair and equitable to the persons affected thereby, and that such order contain recitals in accordance with the requirements of the Internal Revenue Code, as amended, including Section 1808 (f) and Supplement R thereof;

Electric having further requested the Commission, pursuant to Section 11 (e) of the Act, to apply to an appropriate court, in accordance with the provisions of Section 18 (f) of the Act, to enforce and carry out the terms and provisions of the Plan;

The Commission having considered the record in the matter and having filed its Findings and Opinion herein on March 1, 1949, finding therein that the Plan is necessary to effectuate the provisions of Section 11 (b) of the Act and, if amended in certain respects as set forth in said Findings and Opinion, fair and equitable to all persons affected thereby;



Electric having, on March 3, 1949, filed an amendment to the Plan modifying the Plan in accordance with the aforesaid Findings and Opinion of the Commission;

The Commission having considered the aforesaid amendment filed on March 3, 1949, in the light of its Findings and Opinion of March 1, 1949, and finding that the Plan, as thus amended, is necessary to effectuate the provisions of Section 11 (b) of the Act and is fair and equitable to the persons affected by it;

IT IS ORDERED on the basis of the record herein and the said Findings and Opinion, pursuant to Section 11 (e) of the Act and other applicable provisions of the Act, that the said Plan, as amended, be and it hereby is approved subject to the terms and conditions contained in Rule U-24 and to the following additional terms and conditions:

1. That the order entered herein shall not be operative to authorize the consummation of the transactions proposed in the Plan, as amended, until an appropriate United States District Court shall, upon application thereto, enter an order enforcing said Plan, as amended;

2. That jurisdiction be and hereby is specifically reserved to determine the reasonableness and appropriate allocation of all fees and expenses and other remuneration incurred or to be incurred in connection with the said Plan, as amended, and the transactions incident thereto, other than the fairness and reasonableness of the fees and expenses incident to the stockholders' actions enumerated in Part II of the Plan, as amended;

3. That jurisdiction be and hereby is specifically reserved with respect to the appropriateness under the Act of the proposed charter provisions and new Board of Directors of United Gas Corporation ("United"), both of which matters are the subject of a separate application-declaration filed by United under File No. 70-1949;

4. That jurisdiction be and hereby is specifically reserved to entertain such further proceedings, to make such supplementary findings and to take such further action as may be necessary in connection with the Plan, as amended, the transactions incident thereto and the consummation thereof, and (R-3, 76) to institute and conduct such further proceedings under Section 11 (b) of the Act with respect to Middle South Utilities, Inc. ("Middle South") as may be necessary or appropriate;

IT IS FURTHER ORDERED that the application-declaration of Bond and Share referred to above be and it is hereby granted and permitted to become effective;

IT IS FURTHER ORDERED AND RECITED that the issues, distributions, transfers and exchanges of securities and the expenditures, investments and transactions specified and itemized below, all as provided by the Plan, as amended, are necessary or appropriate to the integration or simplification of the holding company systems of which Electric and Bond and Share are members, and are necessary or appropriate to effectuate the provisions of Section 11 (b) of the Act, all in accordance with the meaning and requirements of the Internal Revenue Code, as amended, including Section 1808 (f) and Supplement R thereof:

1. The organization of Middle South, as provided in the Plan, as amended, and the transfer to it by Electric of all securities owned by Electric in Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service, Inc. and Gentilly Development Company, Inc. and cash in the amount of \$2,000,000 in exchange for the issuance and transfer to Electric by Middle South of all its initially outstanding capital stock, except directors' qualifying shares;

2. The distribution and transfer by Electric of 6.5 shares of Common Stock of United and 4.5 shares of Common Stock of Middle South in exchange for each share of

\$7 Preferred Stock of Electric, including all accumulated and unpaid dividends thereon, surrendered for retirement pursuant to the Plan, as amended, by holders of the \$7 Preferred Stock;

3. The distribution and transfer by Electric of 5.9 shares of Common Stock of United and 4.1 shares of Common Stock of Middle South in exchange for each share of \$6 Preferred Stock of Electric, including all accumulated and unpaid dividends thereon, surrendered for retirement pursuant to the Plan, as amended, by holders of the \$6 Preferred Stock;

4. The distribution and transfer by Electric of 6.25 shares of Common Stock of United and 4.3 shares of Common Stock of Middle South and cash as provided in the Plan, as amended, in exchange for each share of \$7 Second Preferred Stock, including all accumulated and unpaid dividends thereon, surrendered for retirement pursuant to the Plan, as amended, by holders of the \$7 Second Preferred Stock;

5. In connection with the complete liquidation of Electric, the distribution and transfer of the remaining assets, consisting of Common Stock of Middle South, Common Stock of United and cash, among holders of the Common Stock and Option Warrants of Electric pursuant to the Plan, as amended;

6. The issuance, distribution, transfer and exchange of Common Stock scrip of United and of Middle South to the extent necessary to carry out the Plan, as amended;

(R-3, 77) 7. The revocation, abrogation and cancellation of all the outstanding securities of Electric, pursuant to the Plan, as amended; and

8. All other exchanges and transfers of the \$7 Preferred Stock, the \$6 Preferred Stock, the \$7 Second Preferred Stock, the Common Stock and the Option Warrants

of Electric for Common Stock and Common Stock scrip of United and of Middle South which are required in order to carry out the Plan, as amended.

By the Commission.

(SEAL)

ORVAL L. DuBois,  
Secretary.

(R-3, 78) DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

*In the Matter of*  
ELECTRIC POWER & LIGHT CORPORATION  
ELECTRIC BOND AND SHARE COMPANY

Civil Action  
No. 49-347

ORDER APPROVING AND ENFORCING PLAN.

A certain Plan for Compliance with Section 11 of the Public Utility Holding Company Act of 1935 (hereinafter called the "Act") having been proposed by Electric Power & Light Corporation (hereinafter called "Electric"), a registered holding company under said Act, and filed on March 24, 1948, with the Securities and Exchange Commission (hereinafter called the "Commission"); and hearings having been duly held before the Commission with respect to said Plan after due notice to the persons affected thereby; and the Commission after such notice and opportunity for hearing having issued its Findings and Opinion dated March 1, 1949, with respect to said Plan and having found therein that said Plan could be approved as necessary to effectuate the provisions of Section 11(b) of the Act and as fair and equitable to the persons affected thereby, if amended in certain relatively minor respects, all as set forth in said Findings and Opinion; and Electric having on March 3, 1949, filed an amendment to said Plan in accordance with said Findings and Opinion

of the Commission (which plan as so modified is hereinafter referred to as the "Plan"), and the Commission by order dated March 7, 1949, having found the Plan necessary to effectuate the provisions of Section 11(b) of the Act and fair and equitable to the persons affected thereby and having approved the Plan; and Electric having requested the Commission to apply to an appropriate court to enforce and carry out the terms and provisions of the Plan; and the Commission having on March 7, 1949, filed with this Court an application to enforce and carry out the terms and provisions of the Plan; and this Court by Order dated March 7, 1949, having fixed April 12, 1949, as the date for the commencement of hearings on said application, and having prescribed the notice of such hearings (R-3, 79) to be given to the persons affected by the Plan, and the time within which objections might be made to the Plan and the manner of making such objections; and the Court in said order having afforded an opportunity to all interested persons to file objections to said application and briefs in support of such objections on or prior to March 31, 1949, and having given supporters of the Plan until April 7, 1949 to file answering briefs and having afforded objectors until April 12, 1949 for the filing of reply briefs; and it appearing that due and sufficient notice of such hearings was given, all in accordance with the provisions of said order of this Court; and objections to the granting of the Commission's application, together with supporting briefs and reply briefs, having been filed on behalf of certain holders of the Common Stock of Electric, and a statement of objections and a supporting brief having been filed by a holder of the \$7 Preferred Stock of Electric, and a statement of objections having been filed on behalf of a holder of the \$7 Second Preferred Stock, all as more fully appears from the record and files of the Court herein; and the Court having held hearings on April 12 and April 13, 1949, and the Commission, Electric, Electric Bond and

Share Company (hereinafter called "Bond and Share"), a committee for preferred stockholders of Electric, certain holders of the \$7 Second Preferred Stock of Electric and certain holders of the Common Stock of Electric having appeared in support of the Commission's application to this Court; and two committees for common stockholders of Electric, and a holder of the \$7 Preferred Stock having appeared in opposition to the Commission's application to this Court; and all interested persons having been afforded full opportunity for hearing; and this Court having duly considered the Plan, the Findings and Opinion and Order of the Commission, the Commission's application herein, the objections thereto and the briefs in support of and in opposition to the Commission's application, and having heard oral argument from all interested persons who desired to be heard in support of and in opposition to said application, and being fully advised in the premises, and having filed a memorandum of decision herein, it is hereby

(R-3, 80) FOUND, ORDERED, ADJUDGED AND DECREED:

1. The Court adopts as its Findings of Fact and Conclusions of Law the Findings and Opinion of the Commission dated March 1, 1949, and its Order dated March 7, 1949, set forth as Exhibits B and E, respectively, to the Commission's application herein.

2. Subject to the terms and conditions of the Commission's order dated March 7, 1949, as set forth in Exhibit E to the Commission's application herein, the Plan is approved as fair and equitable and as appropriate to effectuate the provisions of Section 11 of the Act, and the Court hereby directs that the Plan be enforced and carried out in respect to all persons affected by said Plan including all security holders and creditors of Electric.

3. Subject to the terms and conditions of said order of the Commission dated March 7, 1949 and to the extent



necessary to enforce and carry out the terms and provisions of the Plan, and for the purpose of enforcing and carrying out the terms and provisions thereof, the Court hereby takes exclusive jurisdiction of Electric and the assets thereof, whether now owned or hereafter acquired, and wherever located.

4. Electric shall retain possession of its assets and continue the operation of its business through its officers, directors, employees and agents, in accordance with its Certificate of Organization and its By Laws, both as amended, except as may be otherwise expressly provided by this order or any other orders of the Court which may be entered herein, and Electric may enter into any transaction not inconsistent with the Plan or with this order, including the filing of any appropriate application or declaration or notice with and the entry of appropriate orders by the Commission, in conformity with the Act and the rules and regulations and orders promulgated and issued thereunder, in all cases where such filing and the entry of such orders would be required if this Court had not taken such jurisdiction.

5. Electric, acting by or through its President, Vice President or Treasurer, and Bond and Share, acting by or through its officers, directors, employees or agents, are hereby authorized, ordered and directed to comply with the terms and provisions of the Plan and of this Order and to take or cause to be taken all acts necessary or appropriate to consummate and carry out the Plan, in accordance with the terms and provisions thereof, and of this Order including, without limiting the generality of the foregoing, any steps or proceedings necessary or appropriate to be taken by Electric in connection with its dissolution under the laws of the State of Maine and other applicable laws.

6. The Plan shall become effective and shall be consummated as soon as practicable after the date hereof, the



consummation date of Parts I, II, and III of the Plan (hereinafter referred to as the "Preferred Stock Consummation Date"), and the Consummation Date of Part IV (hereinafter referred to as the "Common Stock Consummation Date"), to be fixed by the Board of Directors of Electric in accordance with the terms and provisions of the Plan.

7. At least 10 days prior to the Preferred Stock Consummation Date, Electric shall cause to be published at least once, in a daily newspaper of general circulation in each of the cities of New York, New York, Boston, Massachusetts, Chicago, Illinois, and Philadelphia, Pennsylvania, an appropriate notice to all holders of the preferred stocks of Electric informing them of the Preferred Stock Consummation Date, and advising them of the provisions of the Plan whereby their rights incident to the ownership of such preferred stocks including the rights to dividends thereon, terminate as of the Preferred Stock Consummation Date, except only the right to participate in the Plan, in the manner and to the extent therein provided, and shall cause a copy of said notice to be mailed to all known holders of the preferred stocks of Electric in so far as their identity may be known to Electric.

8. At least 10 days prior to the Common Stock Consummation Date, Electric shall cause to be published at least once, in a daily newspaper of general circulation in each of the cities of New York, New York, Boston, Massachusetts, Chicago, Illinois, and Philadelphia, (R-3, 82) Pennsylvania, an appropriate notice to all holders of common stock and option warrants of Electric informing them of the Common Stock Consummation Date and advising them of the provisions of the Plan whereby their rights incident to the ownership of said securities terminate as of the Common Stock Consummation Date, except only the right to participate in the Plan, in the manner and to the extent therein provided, and shall cause a copy of said

notice to be mailed to all known holders of the common stock and option warrants of Electric in so far as their identity may be known to Electric.

9. In addition to the annual notice by publication to those security holders of Electric who have not theretofore surrendered securities of Electric for exchange, such notice being provided in Parts III and IV of the Plan, the Exchange Agent, before the expiration of five years after the Common Stock Consummation Date, shall take further steps to notify such persons of the necessity for surrendering their securities for exchange within said five-year period, by engaging duly qualified persons to locate such security holders, the Exchange Agent to be reimbursed for expenses thus incurred by Middle South Utilities, Inc. and United Gas Corporation.

10. After consummation of the Plan in accordance with the provisions thereof and of this order, and any subsequent orders which may be entered by the Court herein, application may be made to this Court for an order releasing and discharging Electric and its assets from the jurisdiction of this Court.

11. All persons participating in this proceeding and all other persons, including all creditors and security holders of Electric and Bond and Share, are hereby permanently enjoined from doing any act or taking any action interfering with, or tending to interfere with, this proceeding or with compliance with any orders of the Commission or of this Court with respect to the Plan or with the carrying out of any of the transactions proposed in or contemplated by the Plan, including the commencement or prosecution of any action, suit or proceeding at law or (R-3, 83) in equity, or under any statute, in any court or before any executive or administrative officer, commission or tribunal, other than such proceeding or proceedings before the Commission or this Court as may be authorized by the Act or the rules and regulations promulgated

thereunder, and such review, if any, in the United States Court of Appeals as may be provided by law.

12. This Court reserves jurisdiction to consider any claims or controversies arising out of or in connection with the consummation of the Plan, including any claims against or controversies with Electric or Bond and Share, and any claims against their respective officers, directors, employees or agents for any of their acts in carrying out the provisions of the Plan.

13. This Court further reserves jurisdiction to entertain such further proceedings, to enter such supplemental orders, and to take such further action in connection with the Plan, the transactions incident thereto, and the consummation thereof, as may be necessary or appropriate.

By THE COURT.

(Signed) JOHN W. CLANCY  
United States District Judge.

Dated: New York, N. Y., April 22, 1949.

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(R-3, 84) SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

*In the Matter of*  
ELECTRIC POWER & LIGHT  
CORPORATION

File No. 54-139  
(Public Utility Holding  
Company Act of 1935)

APPLICATION BY COMMITTEE FOR THE HOLDERS OF THE COMMON STOCK FOR REIMBURSEMENT OF EXPENSES AND FOR ALLOWANCE OF FEES.

Pursuant to Section 11(f) of the Public Utility Holding Company Act of 1935 and the regulations thereunder,

*Application for Reimbursement.*

and to the Plan of Reorganization of Electric Power & Light Corporation, Christian A. Johnson and Cameron Biewend, individually and as a Committee for the Holders of the Common Stock of Electric Power & Light make application to the Commission to approve and direct the payment by Electric Power & Light Corporation of the following expenses of the Committee and expenses and services of counsel and financial expert engaged by this Committee:

Expenses and Disbursements of the Committee .....	\$16,347.47
Compensation of P. Harold Peterson (In addition to payments already made by the Committee) .....	9,454.42
Compensation of Burns, Blake & Rich....	35,975.00
Expenses and Disbursements of Burns, Blake and Rich.....	2,770.06

A more detailed explanation of the Committee's expenditures are set down in the schedule marked "Exhibit A" attached to this Application. The expenditures of Burns, Blake & Rich are in a schedule marked "Exhibit B" attached to this Application. The hours of Burns, Blake & Rich are set down in a schedule marked "Exhibit C". A description by Mr. Peterson of his work is attached in "Exhibit D".

(R-3, '85) The final amended Plan of Reorganization of Electric Power & Light Corporation was filed on March 25, 1948, under Section 11(e) of the Public Utility Holding Company Act of 1935. The Committee was formed on April 9, 1948. Mr. John F. Rich of Burns, Blake & Rich, of Boston, Massachusetts, was designated as counsel on that date, and Mr. P. Harold Peterson of New York City was engaged on April 28, 1948 to give financial advice on the Plan of Reorganization and to prepare expert testimony before the Commission. The details of the organization of the Committee and the background and

experience of its members are set forth in the declarations which were filed under Rule U-62 to which reference is made.

Pursuant to a Post-Amendment to its Declarations under Rule U-62, the Committee, which at its inception represented a substantial amount of common stock, sent a letter to common stock shareholders stating its position in the Reorganization and also solicited authorizations to represent them in the proceedings. The Committee ultimately represented approximately 400,000 common shares of a total of 1,477,149 shares in the hands of the public (excluding shares held by Electric Bond and Share). The Committee was the sole representative of the public common to present evidence on all aspects of the reorganization.

This Committee, its counsel, and financial expert did their work under great pressure because of the rapidity with which the proceedings were completed and the small amount of time available for preparation. The first hearings were held on April 14, 1948, five days after organization of the Committee. Hearings were commenced on May 4 and held continuously, except during weekends, through May 21. Mr. Rich was required to work daily (R-3, 86) and nightly in preparation for the latter sessions, during which he cross-examined company witnesses. He was frequently assisted by Mr. Biewend and Mr. Johnson during this period. During the month of June, counsel and Mr. Peterson worked constantly on preparation of the Committee's direct evidence. This work was performed to the almost complete exclusion of other important work which needed to be performed in their respective offices. Hearings were again held on June 30 and July 1 and from July 7 to July 9 during which time Mr. Peterson presented the Committee's direct case and was cross-examined by other counsel. From July 12 to August 13, counsel spent virtually full time, including a great deal of night work, in preparation of Proposed

Findings and Conclusions and a Supporting Brief, which were submitted to the Staff of this Commission. The Staff's Recommended Findings and Opinion were forthcoming within two and a half weeks, and work immediately began on exceptions to its report and supporting brief. This was completed after two weeks of uninterrupted work during the day and evenings. After submission of the brief on September 15, preparation for oral argument was begun, and Oral Argument was made on September 21, 1948.

Hence, from April 9, the date in which counsel entered the case, to September 21, 1948, the time of oral argument before the Commission, counsel worked almost exclusively on the preparation of this case. The hearings were actually completed in less than three months and the case was in the hands of the Commission in a little over five months. During this period, because of the rigid time schedule, work on other cases and legal matters was postponed, often at a time when these matters demanded closest attention.

(R-3, 87) The Commission's decision was handed down on March 1, 1949; proceedings followed before Judge Clancy in the United States District Court for the Southern District of New York. Mr. Samuel Becker of New York City was engaged as counsel for the Committee in the proceedings in this court; however, because of the limited time allowed for filing objections, Mr. Rich prepared a "Statement of Objections and Brief", which was filed with the court. Later a Supplemental and Reply Brief was written jointly by Mr. Rich and Mr. Becker and submitted on April 13, 1949. At this time, oral argument was made by Mr. Becker. Another brief was jointly prepared and submitted to the Circuit Court of Appeals for the Second Circuit. Mr. Becker presented oral argument to this Court on June 14, 1948. Final decision on the case was handed down on August 9, 1949.



From its formation, the Committee took an active part in preparation of its case before the Commission. The Committee worked closely with its counsel and expert and analyzed and made studies of the earnings of Electric Power & Light and its subsidiaries. Mr. Johnson prepared and gave testimony before the trial examiner on certain aspects of the case; he was cross-examined by opposing counsel. The Committee and its counsel wrote many letters to holders of common stock concerning the provisions of the plan and the progress of the proceedings before this Commission and the courts. Mr. Biewend attended most of the hearings on the plan and aided counsel in presentation of the case and in cross-examination of witnesses. Mr. Johnson attended many hearings and was in constant touch by telephone with counsel and Mr. Biewend on all important matters during hearings which he did not attend. The Committee held formal meetings and during the time the plan was before this Commission had informal discussions of aspects of the plan almost daily. The Committee (R-3, 88) has already stated, in a declaration pursuant to Rule U-62, that it does not intend to ask for compensation for its personal services in connection with the reorganization proceedings. The Committee asks only for reimbursement of its expenditures, a list of which are annexed as "Exhibit A" to this Application.

Burns, Blake & Rich worked a total of 1,648 $\frac{3}{4}$  hours as recorded in its time sheets, copies of which are annexed as "Exhibit C". In addition, John Burns, a partner of the firm, spent approximately 150 hours on this matter which is not recorded in the time sheets, making a total of 1,798 $\frac{3}{4}$  hours. This work consisted principally of study of the plan, drafting of declarations filed with the Commission and letters sent to shareholders, cross-examination of witnesses, assistance in the preparation of direct testimony of the Committee's witnesses and of financial exhibits, writing of three separate exceptions



or briefs submitted by this Committee and collaboration on two additional briefs presented to the courts.

Mr. Becker's work consisted of writing two briefs in collaboration with Burns, Blake & Rich, preparation and delivery of oral arguments before the District Court and the Circuit Court of Appeals, and handling of miscellaneous duties involved in designating the record and perfecting the appeal to the Circuit Court. The Committee has compensated him for his services in the sum of \$5,000 for services and \$1,049.79 for expenses as shown on "Exhibit A", page one, and now asks reimbursement for this payment.

Mr. Peterson's work consisted of the presentation of expert testimony on the Company's Plan. This included the preparation of exhibits, projections of earnings, analyses of the Company's plan and determination of a proper (R-3, 89) allocation based on price-earnings ratios and his own earnings estimates. Mr. Peterson's testimony was based on extensive study of the power, natural gas and oil industries. His work covered the greater portion of his time while the proceedings were in progress, totaling 717 hours. This Committee has already reimbursed Mr. Peterson in the amount of \$2,734.58, as an advance to cover office overhead and out-of-pocket expenses. The payments of this Committee and the additional compensation requested by him total \$12,189. inclusive of expenses, or \$17.00 an hour including allowances for overhead and other expenses. "Exhibit D" is a letter from Mr. Peterson explaining the work he has done and the basis for his compensation.

We submit that public policy is best served if all classes of security holders are provided representation before the Commission in order that the Commission may have the benefit of the conflicting views of all parties whose rights are substantially affected by a reorganization. The plan of recapitalization of Electric presented varied complex legal and valuation questions which made

it essential that the publicly-held common stock be adequately represented. It is submitted that this Committee, together with its counsel and financial expert, represented the common with faithfulness and aided the Commission in acquiring a full understanding of the important legal issues involved in the plan. The Committee does not ask for any compensation for its own work but makes application only for reimbursement for its own out-of-pocket expenditures, and for reasonable compensation for its counsel and financial expert, in the amounts indicated.  
December 16, 1949

Respectfully submitted,

CHRISTIAN A. JOHNSON  
CAMERON BIEWEND

By /s/ CAMERON BIEWEND  
Cameron Biewend

(R-3, 90)

COMMONWEALTH OF MASSACHUSETTS }  
COUNTY OF SUFFOLK } ss.

Before me, this 16th day of December, 1949 personally appeared Cameron Biewend, known to me to be the person who subscribed the foregoing Application who being duly sworn, deposed and said that he signed said Application, that he was familiar with the contents thereof, and that the facts set forth therein were true to the best of his knowledge, information and belief.

(SEAL) /s/ HAROLD B. DONDIS  
Notary Public in and for the Commonwealth  
of Massachusetts

54a *Petition by Electric Bond and Share Company.*

(R-3, 118)

BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C.

*In the Matter of*  
ELECTRIC POWER & LIGHT CORPORATION  
File No. 54-139  
(Public Utility Holding Company Act  
of 1935)

*In the Matter of*  
ELECTRIC BOND AND SHARE COMPANY  
AMERICAN POWER & LIGHT COMPANY  
PACIFIC POWER & LIGHT COMPANY  
ELECTRIC POWER & LIGHT CORPORATION  
UTAH POWER & LIGHT COMPANY  
NATIONAL POWER & LIGHT COMPANY  
EBASCO SERVICES INCORPORATED  
*Respondents*  
File No. 59-12  
(Public Utility Holding Company Act  
of 1935)

Petition by Elec-  
tric Bond and  
Share Company  
for Approval of  
Payment of Fees  
and Expenses

(1) There have been rendered to Electric Bond and Share Company certain statements for services rendered in connection with the reorganization of Electric Power & Light Corporation, some of which have been paid by Electric Bond and Share Company and others are to be paid. Such services are described in the statements or affidavits of the various persons or parties furnishing such services, which statements or affidavits are on file or will be placed on file in these proceedings. Certain of the statements or affidavits are annexed to this petition.

*Petition by Electric Bond and Share Company.* 55a

(R-3, 119) (2) The management of Electric Bond and Share Company is familiar with the services above referred to and described in such statements or affidavits and has agreed with the persons or parties making claims for such services that the amounts claimed as fees and expenses are fair and reasonable. The names of the persons or parties furnishing such services, together with the respective amounts claimed as fees and expenses are as follows:

<u>Name</u>	<u>Amount</u>
Benjamin T. Brooks	\$ 700.13
Ralph E. Davis	\$11,250.00 (includes expenses of \$1,271.19)
Edward Hopkinson, Jr.	\$100,000 (includes expenses)
Ebasco Services Incorporated—(at cost)	\$79,087.02 (includes expenses)
Reid & Priest	\$70,000.00 (and expenses of \$4,350)

WHEREFORE, Electric Bond and Share Company prays an order of this Commission releasing jurisdiction over the payment of such fees and expenses and approving the payments already made to Ralph E. Davis in the aggregate amount of \$11,250.00, to Benjamin T. Brooks in the amount of \$700.13, and to Ebasco Services Incorporated in the amount of \$79,087.02, and the payment of the above amounts proposed to be made to Edward Hopkinson, Jr. and Reid & Priest.

Dated: New York, New York  
December 20, 1949

ELECTRIC BOND AND SHARE COMPANY,

By

/S/ GEORGE G. WALKER,

56a *Petition by Electric Bond and Share Company.*

(R-3, 120)

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

The undersigned, being first duly sworn deposes and says:

That he has duly executed the attached petition for **and on behalf of Electric Bond and Share Company**; that he is President of such Company; that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

/S/ GEORGE G. WALKER.

Subscribed and sworn to before me this 20th day of December, 1949.

/S/ DONALD T. HOWELL,  
Notary Public.

[Notarial  
Seal]

(R-3, 121)

BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C.

*In the Matter of*  
ELECTRIC POWER & LIGHT CORPORATION  
File No. 54-139  
(Public Utility Holding Company Act  
of 1935)

*In the Matter of*  
ELECTRIC BOND AND SHARE COMPANY  
AMERICAN POWER & LIGHT COMPANY  
PACIFIC POWER & LIGHT COMPANY  
ELECTRIC POWER & LIGHT CORPORATION  
UTAH POWER & LIGHT COMPANY  
NATIONAL POWER & LIGHT COMPANY  
EBASCO SERVICES INCORPORATED  
*Respondents*

Affidavit of  
Benjamin T.  
Brooks

File No. 59-12  
(Public Utility Holding Company Act  
of 1935)

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

BENJAMIN T. BROOKS, being duly sworn, deposes and says that:

1. He resides in Old Greenwich, Connecticut; his place of business is 405 Lexington Avenue, New York 17, N. Y. and his present business or occupation is that of a consulting chemist.



2. On the 5th day of April, 1946, he testified before the Securities and Exchange Commission on behalf of Electric Bond and Share Company, his testimony being found at pages 1179-1258 of the transcript of record herein. There appears at pages 1180-1183 of such record a memorandum of qualifications of affiant.

(R-3, 122) 3. His engagement on behalf of Electric Bond and Share Company was to testify on the subject of chemical utilization of natural gaseous hydrocarbons including natural gas and was limited to the chemical utilization of gaseous hydrocarbons in the production of synthetic products now and in the post-war period.

4. In addition to the preparation and giving of the testimony above referred to, affiant had many conferences with representatives of Electric Bond and Share Company and Ebasco Services Incorporated and with counsel for Electric Bond and Share Company concerning various matters involved in these proceedings and relating to the testimony given by affiant.

5. Affiant began work on this assignment on April 1, 1946, which was completed on April 5, 1946.

6. Affiant's charge to Electric Bond and Share Company was \$700.13, which was at a rate usually charged by affiant in matters of similar importance. Electric Bond and Share Company agreed that the fee was fair and reasonable and has paid the same.

/S/ BENJAMIN T. BROOKS.

Subscribed and sworn to before me this 2nd day of December, 1949.

[SEAL]

/S/ JAMES ALDEWERELD,  
Notary Public.  
James Aldewereld  
[Notarial Stamp]

(R-3, 124)

BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C.

*In the Matter of*

ELECTRIC POWER & LIGHT CORPORATION

File No. 54-139

(Public Utility Holding Company Act  
of 1935)

*In the Matter of*

ELECTRIC BOND AND SHARE COMPANY  
AMERICAN POWER & LIGHT COMPANY  
PACIFIC POWER & LIGHT COMPANY  
ELECTRIC POWER & LIGHT CORPORATION  
UTAH POWER & LIGHT COMPANY  
NATIONAL POWER & LIGHT COMPANY  
EBASCO SERVICES INCORPORATED

*Respondents*

File No. 59-12

(Public Utility Holding Company Act  
of 1935)

Petition by Drexel  
& Co. for Ap-  
proval of Fee for  
Services on Be-  
half of Electric  
Bond and Share  
Company

1. Drexel & Co. has rendered to and on behalf of Electric Bond and Share Company services in connection with the reorganization of Electric Power & Light Corporation and transactions and matters incident to such reorganization. The services so rendered are described in the statement annexed hereto.

2. The management of Electric Bond and Share Company is familiar with such services rendered on its behalf

and has agreed that the fee of \$100,000 claimed for such services is fair and reasonable.

WHEREFORE, Drexel & Co. prays an order of this Commission releasing jurisdiction over the payment of such fee so as to permit Electric Bond and (R 3, 125) Share Company to pay such amount claimed for such services.

Dated: April 3, 1950.

DREXEL & Co.

By

EDWARD HOPKINSON, JR. (Sgd.)

A Partner

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STATE OF PENNSYLVANIA }  
COUNTY OF PHILADELPHIA } ss.

EDWARD HOPKINSON, JR., being first duly sworn, deposes and says:

That he is a partner in the firm of Drexel & Co., the petitioner herein, that he has read the foregoing petition and the statement annexed thereto, and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

EDWARD HOPKINSON, JR. (Sgd.)

Subscribed and sworn to before me this 3rd day of April, 1950.

C. EARL MOORE (Sgd.)

(SEAL)

Notary Public.

My Commission expires February 1, 1953.

(R-3, 126)

BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C.

*In the Matter of*

ELECTRIC POWER & LIGHT CORPORATION

File No. 54-139

(Public Utility Holding Company Act  
of 1935)

*In the Matter of*

ELECTRIC BOND AND SHARE COMPANY  
AMERICAN POWER & LIGHT COMPANY  
PACIFIC POWER & LIGHT COMPANY  
ELECTRIC POWER & LIGHT CORPORATION  
UTAH POWER & LIGHT COMPANY  
NATIONAL POWER & LIGHT COMPANY  
EBASCO SERVICES INCORPORATED

*Respondents*

File No. 59-12

(Public Utility Holding Company Act  
of 1935)

Statement  
Descriptive of  
Services of  
Drexel & Co.

(R-3, 127) On May 3, 1945, Hopkinson had a meeting with Messrs. Calder and Walker of Electric Bond and Share Company at its offices in New York, as a result of which Drexel & Co. was asked to assist Bond and Share in connection with plans under consideration for the simplification of the capital structure of Electric Power & Light Corporation and the elimination of its Preferred Stocks with their dividend arrears.

Following this meeting, Walker furnished Hopkinson

with a large file containing historical earnings of E. P. & L. and its subsidiaries back to 1939, and estimates through 1949. These estimates indicated consolidated balance of earnings for E. P. & L. stocks ranging from \$12,781,000 actual for 1944, pro formed to exclude Idaho and Utah and to give effect to the reset subsidiary capital structures, plant acquisition adjustments, etc. The 1945 estimate was \$11,537,000, increasing to \$13,328,000 in 1949. On the basis of these estimates, a number of studies had been made and photostatic copies were furnished, reaching varying allocations of new Common Stock of E. P. & L. between the Preferreds and Common. Some of these studies were based on a static estimate of \$12,500,000 consolidated net income, Method I—Study #1 and #2; Method I—Study #3 and #4 on the basis of \$13,500,000 static estimated consolidated net income; Method I—Study #5 and #6 on the basis of the estimated consolidated net income referred to above for the first five years, plus a 5% increase in each succeeding year.

Method II—Studies #1 and #2 were both based on \$12,500,000 consolidated net income, but dealt differently with other factors. Method II is also carried forward in Studies III and IV on the basis of \$13,500,000 consolidated net income.

Method III attempted to apply to Electric the theory of allocation based on SEC findings and opinion in American Utilities Service Corporation case (Holding Company Act Release 5114).

Method IV was an allocation based on the market evaluation of the different classes of E. P. & L. Preferred and Common Stocks on April 16, 1945. (R-3, 128) These methods and the several studies referred to resulted in a range of allocations for the \$7 and \$6 First Preferreds from a high of 81% to a low of 64.5%; the \$7 Second Preferred allocation ranged from a high of 7.7% to a low of 5.5%, and the Common ranged from a high of 28.9% to a low of 13.2%.

There was also furnished a mimeographed study (containing two sheets 4/30/45) containing the essential facts regarding the capitalization of E. P. & L., its arrears, etc., and the ledger value of E. P. & L. securities on Bond and Share books, together with the cash cost of such securities to Bond and Share.

These materials were studied by Hopkinson with the assistance of his partner, York, and members of the Drexel & Co. Statistical Department. There was also studied the findings and opinion of SEC in Holding Company Act Release 5271, having particularly to do with United Gas Corporation (September 8, 1944).

Later in May, Drexel & Co. was furnished by Bond and Share with considerable additional material having to do with the subject companies and their earnings and probable market values based on comparisons with outstanding securities. Among such material received was the financial and operating report of United Gas Corporation for the month of March 1945, which contained statistics for the current month, the year to date, and for the twelve months ended with the current month, and the financial report for Electric Power & Light Corporation for the month of February 1945 (Company only and for the Company and its subsidiaries consolidated). This also contained the figures for the year to date and for the twelve months ended with the current month, graph covering the disposition of subsidiary total income for prior years from 1939 projected to 1949, United Gas Corporation graph and chart showing gross income and balance for Common, historical for the years 1938-1944, and estimated years 1945-1949, adjusted to current capitalization. Studies were made of groups of high quality electric companies and medium quality electric companies, relating their market prices to dividends and income, together with charts showing the market valuations based on average prices for the year 1944 and for the first six months of 1945, with relation to times earnings and dividend pay



out. These were all considered as guides to the probable or fair market values of the Electric subsidiaries of E. P. & L.

(R-3, 129) As a guide to the value of United Gas, a spread sheet was furnished comparing it with eight other natural gas producing and transmission companies.

On the basis of this material, Drexel & Co. tested the allocations in the studies referred to above in the light of other one-stock plans. As a result of these studies, Hopkinson and York reached a tentative conclusion that if an estimate of reasonably expected future earnings between \$12,500,000 and \$13,500,000 were to be used, a relatively unsatisfactory result for the Electric Power & Light Common Stock would likely be arrived at. York held a meeting with Messrs. Calder and Walker in New York on May 31st, and expressed this view, suggesting that consideration be given to an offering of United Gas Corporation Common Stock to the E. P. & L. Preferred Stockholders in lieu of a one-stock plan.

Under date of June 1st, Walker sent York, pursuant to a telephone conversation of the preceding day, revised earnings figures on E. P. & L., which were still to be regarded as tentative as there had not yet been received all the backup material from the operating companies, but should be used in Drexel & Co.'s studies in lieu of the figures contained in the memorandum of April 30, 1945.

Shortly after, there was furnished to Drexel & Co. by Bond and Share a revised earnings estimate for E. P. & L. and United Gas substantially increasing the estimated earnings over those used in the earlier studies. As a result of improvement in the operating results, the estimate for the year 1945 for Electric was increased about \$1,000,000, and the figure for 1949 was increased to about \$16,000,000, approximately \$2,750,000 over the earlier figure. These increases included adjustments for additional savings in subsidiary Preferred requirements and for plant acquisition adjustment charges, these two items

aggregating almost \$1,000,000. In the case of United Gas, there was not much change made in the figure for 1945, but the figures for subsequent years were increased approximately \$1,200,000 for 1946, and up to approximately \$1,600,000 for 1949. After further study by the Drexel organization, Hopkinson discussed the matter over the telephone with Walker of Bond and Share on June 7th, and particularly the use of United Gas Common instead of the one class of stock approach. Walker indicated that they also had been thinking along these lines.

(R-3, 130) Under date of July 3rd, Bond and Share sent Hopkinson a six-page memorandum (Draft of June 15, 1945) entitled "Outline of Proposal for Compliance with Section 11(b) of the Public Utility Holding Company Act of 1935", which had been prepared by Electric Power & Light for purposes of discussion with the Commission's staff. Hopkinson was asked for comments on the approach represented by the memorandum, and suggestions as to its text. This was subsequently discussed with Bond and Share officials over the telephone and a variety of questions raised and some suggestions made for revision. Our joint conclusions were that the approach represented by the memorandum was impractical, and did not really solve the problem. It was, therefore, agreed that Bond and Share would actively proceed with putting a definitive plan on paper for consideration, and that we should give E. P. & L. the benefit of our views as the situation went along.

These studies proceeded during August of 1945 and early in September of that year Hopkinson received from Ginsburg a memorandum entitled "Preliminary Analysis of Electric Power & Light Recapitalization Possibilities", with supporting data. This set out in outline form the possible alternative approaches to a plan and the approximate results to the different classes of stockholders. With the improvement in the market price of United Gas Common to about 131½, it seemed that E. P. & L.'s holdings of

United Gas might be more than adequate to take out all the Preferred Stocks at their capitalized present worth, and that some United Gas stock might be retained for the Common, if a combination of United Gas and debentures were used. The tentative conclusion was that this type of plan involved fewer uncertainties than a one-stock plan. The results of a one-stock plan were, however, carefully examined, based on expected earnings of \$16,000,000, and the application of varying discount rates to the Preferred arrears.

For the purpose of discussing these alternative approaches, Hopkinson attended a meeting in New York on Monday, September 10th, with Bond and Share representatives. It was decided to restudy the valuations of all the companies remaining in the Power & Light system so as to determine the fairness of an offer of United Gas stock to both classes of Preferred Stock, as well as to the Common Stockholders. The discount of the present value of the Preferred arrears (R-3, 131) was considered, and also the relative weight to be given earnings and dividends in appraising the value of the subsidiary companies. This involved discussion of future dividend policy. It was agreed that up-to-date data would be assembled and sent to Drexel so that these studies might be as nearly up-to-date as possible. From time to time following this meeting, new balance sheets and earnings statements were furnished to Drexel covering each of the constituent companies, as well as on a consolidated basis. Most of this material came about September 12th and contained a number of explanations with reference to the statements which should be kept in mind in connection with the evaluation of the earnings. This material was studied and set up on a comparative basis.

Under date of September 17th, 1945, Bond and Share sent to York a memorandum explaining the methods used in arriving at calculations of present worth for the Preferred Stocks, and also an explanation of the methods

used by Bond and Share in arriving at valuations for the subsidiary companies based on comparisons with other electric and natural gas companies regarded as reasonably comparable for this purpose.

Under date of September 18th, Bond and Share sent York a summary analysis of the Retirement Reserve Appropriations for the several companies for the twelve months ended June 30, 1945, and June 30, 1944, to be of assistance in evaluating quality of the balance sheet and earnings of these companies. As of September 20th, Drexel & Co. brought-up-to-date earlier studies they had made as of May 1, 1945, representing an index of ten natural gas companies for comparison with United Gas, and eight electric operating companies for comparison with the Electric subsidiaries. This was necessary to reflect the improvement in the market which was taking place for most companies during this period. Under date of September 21st, Hopkinson sent Bond and Share a short tabulation containing certain data regarding earnings, dividends and yields of seven natural gas companies for comparison with United Gas, and particularly having relation to the percentage of earnings paid out in dividends.

A meeting was arranged for Hopkinson and York at the Bond and Share offices on October 16th, 1945. In anticipation for that meeting, Hopkinson was sent two new tables which had been worked out, showing the results to the various classes of Preferred, using varying numbers of shares of United Gas and varying (R-3, 132) possible market prices for United Gas. The meeting was held as arranged at the Bond and Share offices with Hopkinson and York meeting Messrs. Walker, Ginsburg and other members of the Bond and Share staff. There was also discussed the relative treatment as between the 7% and 6% Preferred. Hopkinson expressed the view that any plan should deal with all the Preferred Stocks at the same time, and that while a voluntary plan sounded simple, on the other hand there were fundamental problems that had

to be met and disposed of by SEC sooner or later, and that an enforced plan, on balance, was advisable.

On October 18th, Hopkinson had a talk with Kadane, of the SEC staff, regarding the problems of developing the plan either on a voluntary or an enforced basis, and the mechanics of operating it so as to minimize speculation in the affected securities. This conversation was reported by telephone to Walker that same day.

On October 24th, Hopkinson and York met with Calder, Walker and Ginsburg of Bond and Share in New York City at 10:15 A. M. At 11 o'clock, pursuant to a prior appointment, Hopkinson and York went with Walker and Ginsburg to the offices of Electric Power & Light where there was a meeting with Edgar Dixon, President, and Jirgal, his consultant. All phases of the situation were discussed, particularly the scope of the record that would have to be made in any hearings before SEC and the number of shares of United Gas that would be fixed as a fair equivalent in any exchange offer. Hopkinson urged the desirability of promptly filing an exchange plan without specifying the precise number of United Gas shares, so as to permit hearings getting started and the record made, the number of shares to be supplied by amendment subsequently. Dixon expressed fear that such a method of procedure would lead to a charge of stalling. Hopkinson, on the other hand, contended that such a course might well expedite the ultimate decision rather than delay it. During a portion of the meeting the group was joined by Mr. Wynn, a Director of E. P. & L. The meeting adjourned about 1 o'clock, and Hopkinson and York went to the Bond and Share offices. After having lunch with Walker and Ginsburg, the discussion was continued.

(R-3, 133) On the afternoon of October 25th, 1945, Walker telephoned Hopkinson that the E. P. & L. officials and its Board had had a long discussion regarding the plan but that no final conclusion had been arrived at.

However, it had been arranged that Dixon would go to Philadelphia and discuss procedure with the SEC staff, at a meeting to be held on Monday, October 28th.

On October 26th, Hopkinson again saw Kadane, and reported to him the method of procedure he had urged should be followed by Bond and Share and E. P. & L. with regard to filing an open-end plan, and made the argument that in his, Hopkinson's, opinion such procedure might expedite rather than delay progress, and that it should not be regarded as a stalling move, and was not intended as such. Kadane seemed interested and offered to discuss the idea with other members of the staff. Hopkinson reported this conversation to Bond and Share by telephone.

During this period, the prices of E. P. & L. securities were closely followed and the day to day changes noted.

The SEC Release, No. 5850 (6/7/45) regarding Minnesota Power & Light Company, particularly having to do with the relative treatment as between the \$6 Preferred and the \$7 Preferred, was studied and an analysis thereof made.

With the memorandum dated October 26th, Walker sent to Hopkinson an analysis of the acquisition of E. P. & L. 2nd Preferred by Bond and Share, and the cash cost thereof to Bond and Share. This was accompanied by detailed data prepared earlier, summarizing the essential facts regarding E. P. & L., with breakdowns of its actual and estimated earnings on both a consolidated and a corporate basis. This also had supporting data as to each of the constituent companies.

On Friday, November 2nd, 1945, Walker telephoned Hopkinson that the E. P. & L. Board had the preceding day approved, in substance, filing a voluntary plan on an open-end basis, to become effective if accepted by 75% of the preferred stockholders, in which case a Court enforcement order would be sought. A proof of this plan was sent to Hopkinson by special delivery and received



on Saturday morning, November 3rd. This was analyzed over the week-end by Hopkinson and York, and, on Monday, November 5th, Hopkinson telephoned Bond and Share that in his opinion the plan would not likely succeed as 25% of the preferred was too (R-3, 134) large an amount to permit to remain outstanding in an improved position. Hopkinson urged increasing the percentage from 75% to at least 90%, and also again pressed for a Court enforced plan applying to everybody including the 2nd Preferred. Mr. Walker said that he would present these views to E. P. & L. but he doubted whether it was advisable to ask them to change the proposed course of action. No substantial change was made in the plan, and it was executed by E. P. & L. on November 5th and filed.

On November 7th, Walker telephoned Hopkinson (Tuesday, November 6th, was Election Day), and reported a conversation with Dixon on Monday, in which Dixon said he saw no alternative toward proceeding with the filing of the plan substantially as approved by his Board, although admitting the question as to the 75%.

In a further conversation between Hopkinson and Walker on November 17th, a memorandum regarding the E. P. & L. Plan, prepared by Goodbody & Co., was discussed and it was also reported that the general reaction Bond and Share had received to the E. P. & L. filing had been good.

On November 16th, 1945, Hopkinson and Ginsburg discussed the situation in a telephone conversation and Ginsburg sent Hopkinson, with a letter of November 19th, a proposed exhibit prepared by E. P. & L. for use in connection with the plan hearings. With a letter of November 20th, Ginsburg furnished Hopkinson additional exhibits prepared by E. P. & L., and further data with letter of November 23rd. Included among this material was a booklet containing income and cash forecasts, 1946-1950, of United Gas Corporation and its subsidiary

companies, under date of November 9, 1945. This draft was ultimately superseded by a later draft, under date of January 18, 1946. Additional data, including charts and figures on United Gas, were furnished Hopkinson by Ginsburg, with letter of November 30th, and by Walker, with letter of December 3rd.

Under date of December 4th, and again under date of December 6th, 1945, Ginsburg sent Hopkinson additional material prepared by E. P. & L. for use at the hearings, including earnings forecast for the electric companies. There was also enclosed a comparison of United Gas with 8 other natural gas companies, with prices on one sheet as of 9/1/45, and another with prices as of 11/26/45, indicating that the price of United Gas Common had remained static while other (R-3, 135) natural gas company stocks were moving to substantially higher levels.

Under date of December 7th, Ginsburg sent Hopkinson memorandum on United Gas, prepared by Lampe of Ebasco Services. In acknowledging this, Hopkinson requested preparation of a survey by Ebasco of the natural gas company stocks that were available for trading 5 years previously and those now available, showing how and when the additional blocks of stock came on the market and were listed for trading, etc. This study was intended to develop whether one of the causes that had held back the market in natural gas stocks was the relatively small amount until recently available for trading and the consequent unfamiliarity of most investors with the industry, and that the distributions of natural gas stocks in recent years had increased the trading supply to a point where investment companies and others could now acquire substantial blocks for portfolio inclusion.

On December 7th, Walker telephoned Hopkinson of the death of S. L. Davis, Treasurer of United Gas, and that this would necessitate an adjournment of the hear-

ings which had been scheduled to start on Monday, December 10th. A date in the week of January 21st was suggested as a probable date to which an adjournment would be taken. It was tentatively arranged that a conference would be held during the week of December 17th to discuss and review the various data and materials which had been furnished Hopkinson from time to time.

With letter of December 10th, Ginsburg sent Hopkinson additional material, and by letter of December 12th advised that they were proceeding to have prepared a survey of the natural gas stocks suggested in Hopkinson's letter of December 10th.

Under date of December 14th, 1945, Walker sent Hopkinson a revised copy of Talmage's study of United Gas, and requested the return of the earlier draft, which was done. The revised booklet was entitled "Salient Facts About The United Gas System", and contained 20 pages of text with additional maps, charts and graphs.

On December 19th, Ginsburg sent Hopkinson a further revise of Talmage's study on United Gas Corporation, and this was subsequently put in the record as Bond and Share Exhibit No. 1.

(R-3, 136) On December 21st, 1945, Hopkinson and York attended a 10 o'clock meeting at the Bond and Share offices and stayed through lunch. Messrs. Walker, Ginsburg, and other members of the E. B. & S. staff were present, together with Messrs. Boone and Burton, Counsel. At this meeting the exhibits which had been prepared were discussed, and also the progress of other exhibits in the course of preparation. Boone also discussed the testimony proposed to be offered by Hopkinson and the method of presentation. There was also discussion of the pros and cons of a voluntary type of exchange plan as against an enforced plan to cover all the preferreds of both classes. A partial voluntary plan involved the additional complication as to fairness of treatment as between preferred stock which accepted the

offer and stock which did not, and also the effect of the improvement in position of the 2nd preferred if not included in the plan. It was agreed that a further talk should be had with E. P. & L. regarding switching the plan to an enforced type before notices of the adjourned hearings were sent out.

During the conference Hopkinson and York referred to the material which had been used in the Columbia Gas hearings in connection with estimates of future earnings and the assumptions upon which they had been based. With a letter of December 27th, York sent Ginsburg certain Columbia exhibits which had been used in the Columbia one-stock proceedings, together with a description of the assumptions upon which such estimates of future earnings were based. This material was acknowledged under date of December 28th, and, accompanying the letter of acknowledgment, was a two-page revised program of "Work in Progress on Electric Plan", and the names of the individuals to whom the different items had been assigned. This program, dated 12/27/45, is included in a Document File submitted herewith and incorporated herein by reference as an illustration of the scope of the preparation and the material which was being studied. (Document File No. 1.)

On January 7th, 1946, T. S. Gates, Jr. of Drexel & Co. and Hopkinson lunched at Bond and Share offices with Messrs. Ginsburg, Boone and Burton, and following luncheon were joined by Messrs. Calder and Walker. The whole E. P. & L. situation was reviewed, together with the preparation for resumption of the hearings. Further discussion was had regarding the advantages and disadvantages (R-3, 137) of the voluntary plan, and Ginsburg presented figures showing the position, on the basis of a 75% exchange, of the remaining 25% and all the second preferred. The conclusion seemed inescapable that it would be most advisable to have all the preferreds dealt with at once, and it was agreed that Calder should explore

a change in the type of plan with E. P. & L. This seemed appropriate, particularly for Calder to do, in view of a question which the SEC staff had raised with him as to whether the Commission might not have to insist upon the whole situation being dealt with at once, if the companies did not propose so to do.

On January 9th, York telephoned Ginsburg, who reported Calder's conversations with Dixon regarding the change to an enforced complete plan. Dixon favored leaving this question open for the present, proceeding with the hearings scheduled for February 4th, putting in all necessary testimony covering the company and its subsidiaries, and then determining before closing the record whether a change should be filed making the plan a complete enforced one.

With a letter of January 11th, 1946, Ginsburg sent to Hopkinson two charts, prepared as possible exhibits, showing market prices of E. P. & L. Preferreds on one sheet and of United Gas Corporation on another sheet, the United Gas tabulation showing, in addition, the volume of shares traded by months during 1944 and 1945. To this was also attached a study entitled "Illustration of Effect on Unexchanged Preferred Stock and Second Preferred Stock of Partial Exchange of United Gas Common for Electric First Preferred Stocks" assuming various exchange percentages; one tabulation on the basis of 11 shares of United Gas for each share of \$7 Preferred and 10 shares for each share of \$6 Preferred, and another of 10 shares of United Gas for each share of \$7 Preferred and 9 shares for each share of \$6 Preferred. (See Document File No. 2.)

About this time there was also furnished Hopkinson the Ebasco study regarding natural gas stocks outstanding in 1940 and 1945, together with statistical data regarding the various companies, with price ranges and volume of trading. (See Document File No. 3.)

On January 14th, 1946, Hopkinson had a telephone

conversation with Boone, raising the question as to the status, particularly of a second preferred stockholder, if the change in type of plan was not noticed prior to the taking of testimony, and whether, in such event, stockholders who had not participated (R-3, 138) in the hearings would be bound thereby. Boone said this question was also giving him concern, and should be given careful consideration.

Under date of January 21st, 1946, Ginsburg sent Hopkinson copies of the Electric Plan and notice of the adjournment of the hearing to February 4th, which did not contain any reference to any possible change in type of plan. There was also enclosed a new memorandum regarding United Gas Corporation, together with 4 exhibits; Exhibit A being a study of other natural gas companies, to wit: Consolidated, El Paso, Lone Star, Northern, Oklahoma, Pacific Lighting, Panhandle Eastern, Peoples Gas Light & Coke, and Southern Natural Gas; Exhibit B was a comparison of financial ratios of natural gas companies showing various items of Balance Sheet and Income Account; Exhibit C, a three dimensional chart bringing out the market price of 9 other natural gas companies in terms of times earnings and yield; Exhibit D, a study of the 9 natural gas companies and United Gas, showing relative market price increase in per cent, from September 1, 1945 to November 26, 1945.

Ginsburg also sent to Hopkinson with the above letter of January 21st, a 7-page memorandum entitled "Preliminary Outline, January 3, 1946, The Outlook for Business in the Territory Served by the Subsidiaries of Electric Power & Light Corporation"; a chart showing weekly market prices of United Gas Common and Electric Power & Light Preferreds, from December 1, 1944 to January 11, 1946, together with backup weekly prices for the period; 3 sheets showing possible relative claims of E. P. & L. Preferred Stock and its 2nd Preferred and Common Stocks on varying assumptions per Paton-Waterman formula,



giving 25% weight to the 1st preferred for senior position and without weighting for seniority rights, and also on allocation based on current market prices; also a 2-sheet document showing asset coverage for different classes of E. P. & L. Preferreds and Common before and after the plan for exchange of United Gas Common, on varying exchange ratios, on basis (a) capitalizing United Gas and ALMNO companies at appropriate ratios, and basis (b) taking United Gas at market value plus capitalizing ALMNO earnings. For these documents, see Document File No. 4.

About this time Hopkinson and York prepared proposed questions to be used in connection with the direct examination of Hopkinson, and discussed the general field covered by them in a telephone conversation with Walker and Boone (R-3, 139) on January 23rd. Following this conversation Hopkinson was subsequently sent material covering direct examination of Hargrove, Vice-President of United Gas, and a suggested line of questions for cross-examination, which Hopkinson was asked to review and comment upon.

On January 25th, Hopkinson and York met with Messrs. Ginsburg, Walker and Boone, and Hopkinson dictated a memorandum containing an outline of the testimony he proposed to give on direct examination. Two copies of this were sent to Ginsburg by York, under date of January 31st. York also sent Ginsburg material used in formulas for allocation in the Eastern Gas & Fuel case.

Under date of January 28th, Ginsburg sent Hopkinson material having to do with United Gas.

Hopkinson went to Florida for a short vacation Tuesday afternoon, January 29th.

York met with Ginsburg, Boone and Burton on February 4th and, by letter of same date, York sent Hopkinson a revised draft of his proposed testimony, together with a complete set of the exhibits which had been prepared by Ebasco to supplement it. They also enclosed a complete set of E. P. & L. Exhibits, which were being put

in with their direct testimony on February 4th and 5th. This draft of material, with the exhibits, was studied by Hopkinson and returned with certain suggestions for revisions. Transcripts of the testimony of the hearings held during the first week on February 4, 5, 7 and 8, were sent daily to Hopkinson and studied by him and notes made as to suggested questions on cross-examination. York attended the hearings on February 4, 7 and 8.

Under date of February 7th, Ginsburg sent York copies of revised Exhibits, 3, 5, 7 and 9 to be used in Hopkinson's direct testimony, to be substituted for the earlier exhibits.

Hearings continued during the week of February 11th, 1946, on February 11, 12, 13 and 14; copies of the transcripts of each day were again sent daily to Hopkinson and reviewed by him and comments noted for cross-examination. All these hearings were attended by York.

On February 14th, the hearings were adjourned, subject to the call of the Examiner.

(R-3, 140) At this time United Gas Corporation filed an application with the SEC for permission to join in financing Carthage Hydrocol, Inc. (See SEC Release, February 14, 1946, No. 6408.)

Ginsburg sent York about this time Clucas & Co.'s 3-page memorandum on Electric Power & Light and its plan. This was reviewed by Hopkinson upon his return.

There was furnished to York, early in February, copies of the original Jackson communication to the Preferred Stockholders of E. P. & L., dated October 2, 1945, together with Jackson's Petition and Plan, dated January 26, 1946.

There was also furnished to York copy of the Louria Petition and Plan dated February 2, 1946. These were analyzed by York and memoranda made, under date of February 15th, summarizing the provisions of the plans.

The Jackson Plan provided for each share of \$7 Preferred to receive 13 shares United Gas Common Stock,

plus cash equal to the difference between the sound value of United as found by the Commission and \$199.72 and each share of \$6 Preferred to receive 12 shares United Gas Common and cash equal to the difference between the sound value of United as found by the Commission and \$186.90 and Electric to have the option to redeem the \$7 and \$6 Preferred at those figures plus accrued dividends from January 1st, 1946.

The Louria Plan provided for each share of \$7 2nd Preferred Stock of Electric to receive 5 shares of Common Stock of New Orleans Public Service, Inc., plus cash equal to the difference between the sound value of New Orleans as found by the Commission and \$201.25, and Electric to have option to redeem at that figure plus accrued dividends from January 1, 1946.

Under date of February 26th, 1946, Burton sent Hopkinson for his use and study the following Exhibits:

- (1) Bond and Share Exhibits Nos. 1, 2 and 3 (two copies each);
- (2) Electric Exhibits U-3-U-10, inclusive;
- (3) Electric Exhibits A-11-A-14, inclusive; and
- (4) One copy each of Jackson Plan and Whitehorn Plan.

Under date of February 27th, Ginsburg sent Hopkinson a memorandum, prepared at Hopkinson's request, on production, consumption and uses of sulphur, as bearing on United Gas' stock interest in Duval Texas Sulphur Company.

On March 1st, 1946, Hopkinson and York met at Bond and Share offices (R-3, 141) in New York with Messrs. Calder, Walker, Ginsburg, Boone and Burton. There was discussed whether it might not be better to use the electric properties in the E. P. & L. System as far as possible, to retire the preferreds and as little as possible of United Gas stock. There was also discussed whether Bond and Share should itself file a plan along those or other lines.

There was also reviewed and discussed the testimony presented by E. P. & L. and particularly Hargrove's approach with a very low growth factor. In this connection Hopkinson furnished Boone a copy of the Roos Report filed on behalf of the Koppers Company in the Eastern Gas & Fuel case. No decisions were arrived at. There was also discussion and further revision of Hopkinson's proposed testimony.

Hopkinson was sent by Ginsburg a copy of a study made by Bankers Trust Company regarding the natural gas industry, which Hopkinson studied over the week-end, March 2nd and 3rd, and returned to Ginsburg with letter dated March 4th.

Under date of March 4th, Ginsburg sent Hopkinson a re-write of his proposed testimony in accordance with Hopkinson's suggestions, having to do with the valuation of United Gas Common Stock.

With letter of March 5th, Ginsburg sent Hopkinson a re-draft of Hopkinson's proposed testimony to replace the earlier section which formerly covered "Salient Facts". This had been amplified with material from Hargrove's testimony and exhibits introduced by him.

On March 6th, 1946, Messrs. Walker, Ginsburg, Talmage, Lampe, Boone and Burton came to Philadelphia and spent the afternoon with Hopkinson. At this conference the revised drafts of Hopkinson's proposed testimony were thoroughly reviewed and further revisions and additions agreed to. The testimony was re-drafted and two sets, as re-drafted, were sent to Hopkinson under date of March 12th.

Ginsburg also sent York two copies of a revised chart, which is the first chart of Exhibit 1-N, and a copy of part of Gill's testimony relating to United Gas in the Bond and Share 11 (b)(2) proceedings.

Ginsburg, under date of March 22nd, sent Hopkinson three volumes, the first consisting of 139 pages descriptive of United Gas Corporation; the second containing the ex-

hibits relating thereto, and the third relating to the (R-3, 142) Electric Preferred Stocks and the exhibits having to do with that portion of the testimony. It was not proposed to introduce this latter testimony at the present hearing but to withhold it until Electric had filed the proposed amendment to its plan. There was also enclosed two memoranda having to do with the reasons for not including National Fuel Gas and Tennessee Gas & Transmission among the companies used in the index for comparison. (Document File No. 5.)

The hearings reconvened on March 25th, 1946, with testimony by Ralph E. Davis, and cross-examination by Percival Jackson. This hearing was attended by York and Hopkinson when adjournment was taken until Friday, March 29th.

The hearing on March 29th was entirely taken up with cross-examination of Ralph Davis, and a brief re-direct examination, adjournment not being had until 8:40 P. M., at which time the hearing was continued until April 3rd. York attended this hearing.

Under date of April 1st, Ginsburg sent Hopkinson a list of corrections in the first 89 pages of his testimony, together with 9 re-written pages and a new page 90, in accordance with his suggestions, and also a number of pamphlets having to do with the subject of rubber and the relation of natural gas and its derivatives to synthetic rubber.

On April 5th, the hearings were resumed and the day given over to direct and cross-examination of the witness Dr. Brooks. Neither Hopkinson nor York was present at this hearing, but Hopkinson met Ginsburg for a conference after adjournment that afternoon and subsequently read the transcript of testimony.

On April 9th, 1946, the hearings resumed at 2 P. M., and Hopkinson's testimony was stipulated into the record and consists of pages 1262 to 1367, including Exhibits 5-A to 5-G inclusive, 5-G-1 and 5-H to 5-X inclusive. There

was also marked for identification Exhibit 5-Y. Following this, Percival Jackson cross-examined (see pages 1367 to 1470 inclusive), after which the hearing was adjourned until April 18th.

Under date of April 11th, Burton furnished Hopkinson with two sets of corrected pages and the second part of Hopkinson's proposed testimony, rewritten in accordance with Hopkinson's telephoned suggestions made to Ginsburg on April 10th; and also two complete sets of the proposed exhibits to accompany the second part of Hopkinson's testimony.

(R-3, 143) On April 12th, with letter from Ebasco, Hopkinson was furnished a copy of the Federal Power Commission's Order concerning Southern Natural Gas Co.

Under date of April 17th, Hopkinson received from Ginsburg 17 typewritten sheets entitled "Electric Power & Light Corporation Plan For the Simplification of the Corporate Structure and for the Divestment of the Common Stock of United Gas Corporation" dated April 16, 1946; 4 typewritten sheets containing studies and a comparison of the value of electric properties of Electric Power & Light on various bases; statistical data for said properties for the year 1945, separately and as a Almono System; effect of alternative plans for retirement of Electric Preferreds on asset and earnings position of Bond and Share (a) based on present Electric Plan and (b) based on a proposed plan. This proposed plan is contained in six mimeographed sheets entitled "Electric Power & Light Corporation Plan for Simplification of Corporate Structure and Divestment of United Gas Corporation Common Stock", dated April 18, 1946, which was sent to York in Philadelphia. For draft of plan and comparisons referred to, see Document File No. 6.

On April 18th, 1946, there was further direct examination of Hopkinson (see Transcript, pages 1479 to 1528, inclusive), and there was received in evidence Bond and Share's Exhibits 6 to 10 inclusive, 5-I-1, 5-P-1, 5-C-1, 5-D-1



and 5-E-1. Following this direct examination, cross-examination was begun by Freiberg, Commission counsel (see Transcript, pages 1529 to 1634, inclusive). At 5:15 P. M. the hearing adjourned until 9:30 A. M. the following day. Cross examination was resumed by Freiberg and continued throughout the day until adjournment at 5:20 (see Transcript, pages 1638 to 1792, inclusive). There was introduced in evidence Bond and Share Exhibits 5-C-2 and 6-C-4, and marked for identification 5-L-1.

The transcript of Hopkinson's direct and cross-examination was read by him and memoranda of corrections furnished to Boone by letter of April 23rd, as appears in the transcript.

The material above referred to (Document File No. 6) was studied by Hopkinson and York and a telephone discussion of the Plan with Walker was had on Monday, April 22nd. York and Hopkinson expressed the view that this alternative plan for taking out the E. P. & L. Preferreds through the use of the electric (R-3, 144) properties primarily looked attractive. The question was discussed as to whether findings for such an alternative plan could be based on the present record or whether additional testimony would be required. There was also further discussion of a voluntary plan using United Gas as the medium of exchange, and, as to such plan, Hopkinson again expressed the view that the percentage of Preferreds required to make the exchange effective should be sufficiently high so that the company could announce, as a part of the exchange plan, that any unexchanged shares would be immediately called. This placed hold-out preferred stockholders in the position of facing the possibility of heavy taxes in the event their shares were not exchanged and were called. The question was also discussed whether, if any unexchanged First Preferred shares were to be called if the plan were to be made effective, a simultaneous exchange offer could not be made to the Second Preferred plus call of any unexchanged shares. Walker discussed this with Boone as to legalities.

A general meeting to discuss the whole situation had been arranged for April 26th, and a preliminary meeting was arranged to take place in New York on Wednesday, April 24th, starting at luncheon.

On April 24th, 1946, Hopkinson lunched with Messrs. Calder, Walker, Ginsburg and Burton, and spent the afternoon with them discussing the program for the conference to be held on Friday, the 26th. It was arranged that Walker and Hopkinson should attend the latter meeting.

This meeting was held at the E. P. & L. offices on the 26th, at 10 o'clock. There were also present Messrs. Stathas and Burke of Duff & Phelps, Percival Jackson, Stanley Russell, a representative of Lazard Freres, George Bennett of State Street Investment Trust, John Jirgal, adviser to E. P. & L., Dixon, Walker and Hopkinson. The meeting lasted all morning, and involved discussion of the number of shares of United Gas that would be a fair exchange and the question as to whether the electric properties should be included in the exchange, either as a part of the package or as an alternative. The representatives of the different groups of security holders were unable to arrive at any agreed ratios, and neither Messrs. Dixon nor Jirgal expressed any view on the exchange ratio.

On May 1st, 1946, Hopkinson attended a meeting at the Bond and Share (R-3, 145) offices in New York, with Messrs. Calder, Walker, Ginsburg, Boone and Burton, starting at luncheon, to review the developments since the Friday meeting, and developments at the meeting of Electric directors in the morning. The question of arbitraging between the Electric Preferreds and the securities offered in exchange was explored, and also the possibility of an underwriting to provide any cash necessary to complete the retirement of the Preferreds. During the course of the meeting the group worked on a draft of plan which

Messrs. Boone and Burton had prepared, revising the earlier plan referred to dated April 18, 1946 (Document File No. 6). The new draft was entitled "Plan for Compliance with Section 11 (b)(2) of the Public Utility Holding Company Act of 1935 by Electric Power & Light Corporation, submitted by Electric Bond and Share Company". A number of suggested changes and corrections in this draft were tentatively agreed upon. This draft provided for a voluntary exchange in the first instance, and pay out in cash of the unexchanged shares at the liquidating claim (see Document File No. 7). It was also concluded to prepare and have in draft form, a plan substantially similar in substance, but providing for an enforced exchange under Section 11(e), for a named number of shares of ALMNO plus a specified amount of cash, which would be set forth in the plan, as constituting the fair value of the bundle of rights attaching to the Preferred.

At 4:30 in the afternoon, Calder and Hopkinson met Messrs. Brandi and Egly of Dillon Read & Co., at their offices, to get the benefit of an independent opinion regarding these matters, including the possible success of an exchange without any fixed minimum, on the arbitrage theory which came to be described as a "come and take it" exchange. The unsatisfactory experience along somewhat similar lines in Union Oil of California seemed to weigh definitely against any such experiment.

Starting with May 1st, 1946, Drexel & Co. began keeping a day to day record of market transactions in the Electric Power & Light Preferreds, Common Stock, Option Warrants and United Gas Common, which were put on Hopkinson's desk each day for his information before filing. These detailed records were continued until March 23, 1949. (See Document File No. 8 for the form used.)

On May 2nd, Calder and Hopkinson lunched together in Philadelphia. During the day a Dow-Jones broadtape announcement of the filing by Electric of (R-3, 146) amend-

ments to its voluntary exchange plan came out. (See Document File No. 9 for release; memorandum re closing prices of securities on May 1st, and opening, high, low and last transactions on May 2nd, together with volume.) During the course of the day, York and Hopkinson completed a memorandum, copies of which were given to Calder at luncheon, suggesting a plan based upon reclassifying United Gas Common into a half share convertible preference stock and a half share new common. Considerable work was done exploring the possibilities of such type plan, but it was subsequently abandoned as impracticable. (See Document File No. 9.)

On Friday, May 3rd, 1946, Hopkinson had several conversations with E. B. & S. officers, and there was sent to Hopkinson at his home, by special delivery, drafts dated 5/3/46, entitled "C Plan" "Plan for Compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act of 1935, submitted by Electric Bond and Share Company", and a similarly dated and entitled plan marked "V Plan". These plans were analyzed over the week-end by Hopkinson and discussed over the telephone with Walker Monday morning, May 6th. It was arranged for Hopkinson to take the 5 o'clock train that afternoon and meet Messrs. Calder, Walker, Ginsburg and Boone for dinner to discuss these plans. This was done and Hopkinson returned on the 11 P. M. train. (For drafts of 5/3/46 alternate plans and the Hopkinson analysis, see Document File No. 10.)

At the meeting Hopkinson was given a single sheet entitled "Bond and Share Plan for Retirement of Electric Preferreds", which was marked by him "5/6/46", and also a revised draft of "V Plan", dated 5/6/46. (For these see Document File No. 11.) The dangers of this type plan, including an offer of securities with a fixed cash alternative, was considered and the risk of E. P. & L. becoming liable for substantial amounts of cash if the exchange feature of the plan became unattractive due to

market changes or changes in other conditions before its approval. As a result all agreed that this type of plan could not be recommended by Bond and Share to Electric, and that any plan with a cash alternative must go back to the original consideration of a substantial percentage of the preferred accepting it before its becoming effective and liability to pay cash established.

(R-3, 147) "V Plan" (revised) provided for Electric's offer to the Preferred of shares of ALMNO, plus cash, or, at the option of the preferred holder shares of United Gas plus cash, and that the holders of any preferred, who did not accept one or the other, would be paid their liquidating claim, except that the Second Preferred should be limited to a cash payment of \$175.

The separate sheet contained in Document File No. 11, set up the exchange basis for the \$7 Preferred, as 5 shares ALMNO plus \$45 in cash, or 7 shares United Gas plus \$40 in cash, or \$189.72 in cash. As a result of discussion, Hopkinson's suggestion to eliminate the cash from the offer and have it entirely stock of either, in the one case ALMNO, or in the other United Gas, was accepted. On the suggested basis, there would be sufficient United Gas to take out all the Preferreds, even if all elected United Gas. This theoretically would not be the case with ALMNO so that proration would have to be provided if approximately over 70% of the Preferreds elected ALMNO.

The following day, Hopkinson discussed this type of plan and the number of shares of United Gas which might be used, together with market values. There was also discussion regarding the offer containing ALMNO stock as to whether the value of ALMNO shares would not, in effect, be set in the minds of investors by relating it to the market for United Gas. Hopkinson phoned Walker on May 7th and discussed the matter further, both as to the number of shares to be used, the intrinsic worth of United Gas as against its market value, which had been reduced

following the type of exchange plan announced by Electric, and also whether the percentage for acceptance should be reduced from 75% to 60%, so as to make the likelihood of call more imminent through its becoming effective on the lower percentage acceptance.

On May 8th, 1946, Hopkinson went to New York and met with Messrs. Calder, Walker, Ginsburg, Boone and Burton, to go over a proof of Bond and Share's Plan, similarly entitled as the typewritten plans, but in printer's proof form. This was marked "second proof of May 8, 1946" (See Document File No. 12). One important change related to the right of withdrawal of deposited shares in the event of the extension of the time for obtaining the required percentage, for two additional 15-day periods. It was finally agreed that this should be revised so that if the plan were not declared effective at the end of the first (R-3, 148) 15-day period any depositor could withdraw at any time before the plan had become effective, after which time no withdrawals could be made. There was also discussed the problem of stockholders desiring to exchange after the expiration of the period for which the offer was open. A good deal of trouble had occurred regarding this in past situations, due to transmittal letters having to be rejected on account of imperfections in their papers and there being no time to correct them before the expiration date, and also for other reasons. It was decided to insert a provision permitting exchanges after the expiration of the open period but only with the approval of Bond and Share.

The cash amounts as between the \$6 Preferred and the Second Preferred, \$176.90 for the \$6 Preferred and \$175 for the Second Preferred, were considered, and it was decided to make no change in these. There was also discussion as to whether the certificates of deposit should remain transferable, and it was decided to do so. There was also discussed the question of "when-issued trading". There seemed no way to stop this and actually short sales



of United Gas as against stock to be received under the certificates of deposit could only be safely made after the plan had been declared effective, because prior to that time nobody could be sure of getting the United Gas stock required to cover the short position.

The same evening after Hopkinson had returned home, Ginsburg read to him the inserts to be made in the plan covering the matters which had been discussed at the meeting, to accord with the decisions arrived at. These seemed to be satisfactory.

On May 9th, Hopkinson and Walker talked on the telephone and Hopkinson was advised that Ginsburg was on his way to file the plan with SEC.

On May 15th, 1946, Messrs. Walker and Ginsburg talked to Hopkinson on the telephone and informed him that the staff had called a conference for 4:30 that afternoon to see if the procedure for the hearing on the various plans could be agreed to by E. P. & L. and E. B. & S. It was arranged that Messrs. Ginsburg and Burton would confer with Hopkinson in Philadelphia, preliminary to the 4:30 meeting. This conference took place at 2:30, and later Hopkinson met with Messrs. Ginsburg, Boone and Burton, at the SEC offices for a short session prior to the 4:30 conference.

(R-3, 149) At the 4:30 meeting, Dan James was present, representing Electric, the above-named for Bond and Share, and Messrs. Kaplan, Freiberg, Nydorf and several others of the staff. The question of which plan should be given the right-of-way was discussed, the pending of Electric's appeal in the Supreme Court, the right to retain the Southern electric properties in a single system, which involved the question of integration, and the possibility of eliminating this question from the question as to the fairness of the plan by a reservation to be dealt with at a later date. The conference lasted until after 6 o'clock, with the request by the staff that the two parties endeavor to work out a procedure satisfactory to them for con-

sideration by the staff and the Commission. There was also discussion as to whether a preliminary decision by the Commission, as to the type of plan they would be willing to proceed with might not be handled as a preliminary step so that the parties should be guided as to whether the Commission desired a "piece-meal plan" or an "over-all plan". After conclusion of the meeting with the staff and Electric, a further conference was held between Hopkinson and Messrs. Boone, Ginsburg and Burton.

(On May 16th, "The Commercial and Financial Chronicle" published an article, comparing the Electric Power & Light Plan and the plan filed by E. B. & S. on May 10th. For convenient reference as to the differences between the plans, a photostat of that article is included in the Document File. See No. 13.)

In connection with the preparation for hearings, a tentative conference had been arranged for Ginsburg to come to Philadelphia to see Hopkinson on May 17th, but on the afternoon of May 16th Ginsburg telephoned a message to Hopkinson that he was not really in shape to discuss the preparation and would not come down on the 17th unless Hopkinson particularly wanted him to do so but would want to make an appointment for the early part of the following week.

On the afternoon of May 17th, 1946, Hopkinson and Ginsburg had a long telephone conference regarding various angles of the procedure regarding the situation, particularly with regard to including testimony on the Southern System in the preliminary hearings rather than restricting the preliminary hearings merely to the feasibility of the two types of plans. Ginsburg stated that they might have a further conference with the staff on Monday and he would advise Hopkinson about this later. (R-3, 150) Under date of May 17th, Walker sent Hopkinson a memorandum regarding Electric Power & Light Corporation circulated by E. W. Clucas & Co., under date

of May 16, 1946, discussing the respective plans filed by E. P. & L. and E. B. & S., and their views as to the intrinsic value of the securities involved. (See Document File No. 14.)

On the morning of Monday, May 20th, Ginsburg telephoned that an appointment had been made for a conference with the staff at 3 P. M. on that day, and that they would come to Hopkinson's office upon arrival of the one o'clock train. Messrs. Ginsburg, Boone and Burton came over, and Hopkinson went to the staff meeting with them. There were present: for the staff, Messrs. Kaplan, Freiberg, Holmes and Nydorf, and for E. P. & L. Messrs. James and Canaday. Messrs. Boone and James reported a number of conferences in New York since the last conference with the staff, in an endeavor to agree upon a procedure, and that some progress had been made toward a better understanding of points of view. Members of the staff urged very strongly that further effort should be made to see if the parties could not compromise their differences and agree upon a plan of possible ratios, which would have the united support of the companies and the principal stockholders. There was considerable discussion on the question of procedure if the parties were unable to get together. Boone repeated his position as desiring to go ahead on the part of E. B. & S. with complete presentation of its case; James contended that there should be a decision on the E. P. & L. Plan, with such modifications as might be developed, before taking up any other plan; on the other hand, if the Commission were going to consider the E. B. & S. Plan before reaching a decision on the E. P. & L. Plan, then he wanted presentation of the E. P. & L. Plan to be last. Freiberg asked Hopkinson particularly as to how important Hopkinson thought the inclusion of the electric properties, as an alternate exchange, was, as distinguished from having the plan based solely on United Gas stock, plus a cash takeout for those who did not elect to accept it. Hopkinson took

the position that he did not want to go so far as to say that a plan based solely on United Gas stock could not be successful, but he felt it desirable to include the electric properties for two reasons; (1) because some stockholders had indicated a desire to receive the electric properties, in whole, or in part, and (2) to the extent the electric properties (R-3, 151) were accepted, it would increase the remaining shares of United Gas, which E. B. & S. regarded as having particular attraction for capital appreciation. This meeting with the staff adjourned about 5 P. M., and the representatives of E. B. & S. and E. P. & L. continued their conference.

At this further conference, the principal discussion was to the difference in burden of proof under the Act, of (1) retaining the electric properties in E. P. & L. as distinguished from (2) transferring them to a new corporation.

On May 20th, 1946, Ginsburg gave Hopkinson a three-page document, dated 5/20/46, entitled "Electric Plan—Outline of Material Being Prepared". (This indicates the scope of the preparation under discussion and deemed necessary as a basis of the preparation of testimony for the hearings. See Document File No. 15.)

On the afternoon of May 21st, Hopkinson had a three-cornered telephone conversation with Walker and Ginsburg, regarding plans for a possible meeting in New York with E. P. & L. the following day. This meeting was subsequently cancelled. They also discussed the preparations for the trial and the memoranda of material in course of preparation which Ginsburg had given Hopkinson.

On May 31st, 1946, Ginsburg phoned Hopkinson regarding a conference Messrs. Calder and Dixon had had with the SEC staff. This conversation covered whether a settlement of the claims should be determined at the same time as the determination of the exchange ratios, the exchange ratios, question of liquidation claim as against claim on redemption, and whether a reservation of juris-

diction regarding the Southern System was the best means of handling that situation to avoid the delays involved in a decision under integration.

A further meeting of Hopkinson with the E. B. & S. group was held in New York on June 5th, at which time certain tentative conclusions were reached as to E. B. & S.'s position: (1) that the amount of the claim settlement should be determined at the same time the exchange ratios were; (2) that the claims of the parties to a dollar amount under the equitable equivalent theory seemed to lie within a range of 175 to 199 a share for the \$7 Preferred, with \$189.72 perhaps representing a compromise as to fair value, and (3) regarding the Southern System it was determined that E. B. & S. should support E. P. & L.'s position to endeavor to keep the properties together.

(R-3, 152) On Thursday, June 6th, at 10 o'clock, Hopkinson met Messrs. Calder, Walker, Ginsburg, and Burton at Calder's office. The morning was spent in discussion, preliminary to a meeting with the E. P. & L. group set for 2:30 P. M. At the afternoon meeting there were present for E. P. & L. Messrs. Dixon, James, Jirgal and Canaday, and for E. B. & S. Calder, Walker, Ginsburg, Burton Hawkins and Hopkinson. Three major points were brought out in the discussion, as follows:

1. That the Southern Electric System should be held in the plan and used as an alternate exchange offer, if possible;
2. A compulsory plan was preferable, if it could be done quickly;
3. That the suits and claims should be settled as a part of the whole situation, if possible, rather than retained as a separate controversy.

Following this, there was discussion, although no agreement, on compromise exchange ratios and a suggestion from a substantial stockholder of E. P. & L. was considered for the use of a convertible dividend preference stock

as part of a rather complicated plan. This led to a discussion and statement by Hopkinson of the utilization of a convertible dividend preference stock in the U.G.I.-Philadelphia Electric situation, and the suggestion that if it were to be brought in to this exchange it should be on the simplest possible basis, which would be merely to reclassify part of the United Gas shares and make them part of the package, with the remaining United Gas Common shares, such reclassified preference shares undoubtedly adding to the market value of the package. It was agreed that E. P. & L. and E. B. & S. accounting groups would develop figures with regard to coverage, yield, etc. on various assumptions as to the amount reclassified.

Following this meeting, Hopkinson developed some calculations which he telephoned Walker on June 7th, on the basis of reclassifying 25% of United Gas stock, which would give an over-all coverage of approximately 3 times on the basis of an 80 cent preferential dividend. A price of 23 to yield 3.3%, or 25 to yield 3.2%, seemed reasonable. (For details, see yellow sheet, Document File No. 16.)

Under date of June 7th, Burton sent Hopkinson a copy of memorandum to Calder, under the same date, quoting from SEC Findings and Opinion in connection (R-3, 153) with the United Gas Corporation Reorganization (Holding Company Release No. 5271, September 1, 1944), as to the appropriateness of the issuance of common stock by United Gas as a sole class of security junior to the debt, pointing out, however, that this was based on *pro forma* consolidated earnings for the year ending December 31, 1943, of 67 cents per share of common stock.

Under the same date, Hopkinson sent Burton a copy of the Philadelphia Electric resolutions having to do with the creation of its \$1 Dividend Preference Common Stock. Hopkinson also sent with this copy of letter, photostats used in the Philadelphia Electric case, showing market action of the Philadelphia Electric \$1 Dividend Stock in comparison with Philadelphia Electric Common covering the period December 6, 1941 to July 29, 1944.



On June 10th, 1946, Ginsburg telephoned Hopkinson certain figures based on the reclassification of 36% of United Gas Common, which would permit putting a larger number of preference shares into the package and increasing its market value, but, on the basis of earnings for the 12 months ending April, 1946, would give a direct coverage of 3.3 times and an over-all coverage of 2.2 times. Hopkinson expressed the view that an over-all coverage of 2.2 looked on the low side, and that some alternative ratio should be worked out for the conversion of a lesser percentage of the common shares into dividend preference shares.

On June 11th, Hopkinson had two telephone talks with Walker regarding discussions which had taken place with Dixon of E. P. & L. regarding alternate ratios for an exchange. Certain price and yield data were discussed and also a suggestion of Dixon as to whether it might not be simpler to eliminate the cash alternative.

On June 17th, Hopkinson had a telephone conversation with Calder, in which the latter reviewed the status of the negotiations with E. P. & L. and the staff. Hopkinson entirely agreed with Calder's disapproval of a suggestion of gearing a number of United Gas shares in any exchange to the market level as of a certain future date as lending itself too easily to manipulation by any interested stockholder in the narrow market that existed for United Gas stock.

On the evening of June 17th, Calder phoned Hopkinson that a verbal understanding had been arrived at as to a basis for a compromise plan, giving (R-3, 154) the \$7 E. P. & L. Preferred 10 shares United Gas or 9 shares Southern Electric, settling the claims for \$2,200,000, and Electric Power & Light putting \$9,000,000 in cash into the new company.

On June 19th, 1946, two copies of proof No. 2 were delivered to Hopkinson by Burton in the morning. York and Hopkinson both read these proofs and had a pre-

liminary discussion with Messrs. Walker and Ginsburg regarding certain changes in text late in the morning. At their request a memorandum was prepared and read to Walker over the telephone in the afternoon. The original and three copies of the memorandum were sent to him, the same day by special delivery. (For the memorandum referred to and proof No. 2, dated June 18, 1946, see Document File No. 17.)

Under date of June 21st, Ginsburg sent Hopkinson, following a telephone conversation, material relating to the new Southern Electric System, consisting of two bound volumes, volume 1 largely having to do with the economic aspects of the area, along lines similar to part 1 *re* United Gas, and volume 2 having to do with capital structure, earnings and probable value of the companies going into the new Southern Electric System. Hopkinson reviewed these, and noted certain pencilled suggestions for discussion, and had several telephone conversations with Messrs. Walker and Ginsburg as to the general problem presented.

On June 25th, Hopkinson met with E. B. & S. group in Philadelphia for one o'clock luncheon and subsequently had a 2:30 conference with Messrs. Calder, Walker, Ginsburg and Burton for E. B. & S., Dixon, Canaday and James for E. P. & L., Boone being present at the luncheon in addition to the above E. B. & S. representatives. At that meeting, the proof of June 24, 1946, was considered and discussed and certain further changes agreed upon for inclusion in a subsequent revision. (For Hopkinson's copy and notes, see Document File No. 18.)

Hopkinson met in New York at the E. B. & S. offices, late Thursday afternoon, June 27th, with Messrs. Walker, Calder, Ginsburg and Purton. They reviewed a new proof, under date of June 26th, and also certain riders which James had suggested be incorporated as additional changes. These riders seemed satisfactory to accomplish the spirit of the mechanics E. B. & S. had urged at the meeting in Philadelphia on June 25th. It was arranged

that revised (R-3, 155) proofs would be sent to Hopkinson's home, by special delivery, for consideration over the week-end.

Hopkinson received at home, by special delivery, late Friday night, the revised proof of June 27th, and read the same Saturday morning, and had no further suggestions for changes. The final proof of plan was received by Hopkinson at home Saturday night, re-checked and approved. The final plan with executions by E. P. & L. and E. B. & S., as of July 1st, was received by Hopkinson on July 3rd, 1946.

Under date of July 10th, Walker sent Hopkinson a photostat from Barren's for July 8, 1946, summarizing the compromise plan, and relating the gas and electric shares to other securities. (For convenient reference this is included in the Document File No. 19.)

During this period a first draft of the proposed testimony of Hopkinson was put in question and answer form, with supporting exhibits 11a to 11h inclusive, 12-A-1 to 12-A-Q inclusive; (see folder with typewritten sheets, under date of June 4, 1946, and marked on inside cover "first draft", Document File No. 20.) From time to time revisions of this text and exhibits were developed. (See Transcript August 6, 1946, pages 1927 to 1959; August 7, 1946, pages 1963 to 2036, and the exhibits introduced as a part thereof, all of which are part of this record.) In the course of preparation and revision of Hopkinson's proposed testimony, Ginsburg sent Hopkinson a five-page memorandum with various comments and queries as to the draft then under discussion. (As an illustration of the scope of preparation and the careful consideration of the material to be used, this is included in the Document File No. 21.)

On July 18th, Hopkinson went to New York on the 11 o'clock train and lunched with Messrs. Boone, Burton, Talmage and Colt, discussing recent developments regarding the E. P. & L. plan and the positions to be taken at

the afternoon meeting scheduled with the E. P. & L. officers at 2 o'clock. The above met with Messrs. Dixon, Canaday, James and Jirgal, and there was more than an hour's discussion of coordinating and the presentation of material and the handling of specific topics. Following this meeting, the E. B. & S. group reconvened at its offices, and continued in session until after 6 o'clock, being joined for most of the time by Walker. Previous material was reviewed, and the (R-3, 156) revisions to be made agreed upon in the light of our various studies and the policies as agreed upon at the E. P. & L. meeting. This included a general shortening of the material.

On July 23rd, 1946, Hopkinson had a telephone conversation with Walker and discussed with him the work Hopkinson had done over the week-end on the draft of testimony marked "Part IV" *re* E. P. & L. Plan (equitable equivalent). It was arranged that a meeting be held in Philadelphia the following afternoon to go over this with the E. B. & S. group, which was done. Messrs. Boone, Burton, Talmage and Colt were present, and Part IV was carefully reviewed for Hopkinson's suggested revisions and marked up for re-write. (See Document File No. 22.) After this was completed Hopkinson went over with Colt of Ebasco the financial material he was working on for the revision of Part II, and particularly the revised selection of companies to be used for a comparison index. Walker jointed the group for a short time.

Hopkinson took home with him and worked during the evening of July 24th on the revised Part I of his testimony, and noted thereon a number of further textual revisions. Hopkinson discussed these with Talmage on the morning of July 25th, and arranged to mail Talmage Hopkinson's copy of the draft so that it might be studied by the New York group and discussed over the telephone.

Also on July 25th, Colt telephoned Hopkinson to give him figures comparing the operating and capitalization statistics of the average company, based on the list tenta-

tively agreed upon, in comparison with ALMNO. Hopkinson asked Colt to check comparative current maintenance and depreciation accruals and particularly whether some of the properties in the comparison still contained intangibles.

Hopkinson received a copy of a memorandum from Harley L. Swift to Talmage, dated 7/24/1946, having to do with New Orleans Public Service Transportation, showing rates of fare, wages, and percentage of track on paved streets and in open or neutral track.

On July 26th, Hopkinson telephoned Colt and raised the question of the percentage payout of the composite company average as compared to ALMNO. The question of how Columbus & Southern Ohio should be treated was also discussed, and Hopkinson felt the dividend should be treated as announced in connection (R-3, 157) with the distribution of the stock.

The same day, Talmage phoned Hopkinson and discussed the revisions in progress as requested by Hopkinson concerning parts I and IV of the then draft testimony. He accepted the revisions and Hopkinson agreed to release Parts I and IV, when re-typed, to the E. P. & L. group so long as they understood further changes might be made as the proceedings developed.

Hopkinson received in Atlantic City on Saturday, July 27th, the re-draft of testimony, Part IV (draft of 7/26/46), carefully reviewed it and noted suggestions in pencil to be discussed at a meeting which had been arranged to take place in New York on Wednesday, July 31st.

Hopkinson also received with a memorandum from Talmage, an outline of the testimony and list of exhibits proposed for Electric Bond and Share. (See Document File No. 23.)

On Hopkinson's return to Philadelphia on Monday, July 29th, he received a letter from Burton, containing an outline of testimony and list of exhibits furnished by E. P. & L., containing references to the proposed testi-



mony by Calder and Hopkinson. (See Document File No. 24.)

Hopkinson had also studied over the week-end a Duff & Phelps memorandum *re* the Jackson Plan, which appraised it and compared its machinery to that approved by SEC in Central & Southwest. Hopkinson told Colt that after studying the Central & Southwest material, he thought the differences in the situations were such as to make the Central & Southwest procedure clearly impracticable in the E. P. & L. case. Hopkinson suggested this be called to the attention of E. P. & L. as a likely subject of cross-examination.

On July 30th, Hopkinson read a revised draft of his proposed testimony, Part IV having to do with the value of ALMNO Common Stock. This was discussed over the telephone and certain minor further changes being suggested.

Hopkinson spent most of Wednesday, July 31st, 1946, at the E. B. & S. offices in New York, discussing the information so far given by E. P. & L. as to their testimony, and also went over in detail a discussion of additional points for revision of Parts II and IV of Hopkinson's testimony. Hopkinson was given at this meeting a folder entitled "Contract Term and Rate Provisions of Purchase Contracts and Protective Clauses in Gas & Electric Retail Rates", (R-3, 158) prepared July, 1946; also E. P. & L. "Corporate New Company and Subsidiaries Tentative Consolidating Balance Sheet, June 30, 1946".

Hopkinson received on August 1st, 1946, with memorandum from Talmage, a revised set of Part I of Hopkinson's testimony *re* territory, economics and operating history of ALMNO System companies, and also revised set of exhibits, with a few exceptions which were still in process of revision and reproduction. Hopkinson read these the same day and discussed them with Talmage on the telephone in the afternoon, suggesting that the new money to be put in the ALMNO System companies be in-



cluded in the capital structure for purposes of comparison with the other companies, so as to give a fairer picture of the debt ratio. Hopkinson also requested a memorandum detailing the original cost of the operating companies.

Hopkinson also received on August 2nd, copies of a draft of Dixon's proposed testimony on direct, together with some additional E. P. & L. proposed exhibits. Draft of Dixon's testimony, which was read that day, covered 31 pages.

On August 2nd, Hopkinson had a number of telephone conversations with Messrs. Boone, Burton, Talmage and Colt, regarding corporate and consolidated earnings of the new electric company; indicated consolidated earnings for 1947 were \$1.51, but the range of corporate earnings was between 97¢ and \$1.02, indicating a very low payout percentage by the operating companies. This was regarded as an extremely important matter, as the ability of the company to pay dividends at the expected indicated rate of \$1 was vital to the whole question of evaluation. Hopkinson also discussed with Talmage some questions regarding Part IV testimony, particularly references to the complicated capital structure of E. P. & L. which some of the E. P. & L. group did not like. Hopkinson insisted that these be retained as an important factor in evaluating the respective situations of the security holder before and after the exchange.

With letter from Burton, dated August 3rd, Hopkinson received excerpts from Virginia Public Service, Standard Gas, Northern States Power and Utah Power & Light SEC Releases, relating to allocations as between \$7 and \$6 Preferred stocks, for study for possible questioning on cross-examination as to allocations under the E. P. & L. plan. Hopkinson reviewed these and also a (R-3, 160) memorandum prepared by Drexel & Co.'s Statistical Department covering the same subject, but including Federal Water Service. For some additional working papers used

at this time and not subsequently incorporated in the same or similar form as exhibits, see Document File No. 25.

On August 3rd, 1946, Hopkinson went to Atlantic City, and on arrival received two special delivery packages, one containing revised drafts of Hopkinson's testimony, Parts I, II and IV (the latter eventually Part III), and also a draft of John Jirgal's testimony, containing 24 pages, and a re-draft of Dixon's testimony accompanied by forms of deposit receipts and notice to E. P. & L. preferred stockholders. Jirgal's testimony was also accompanied by certain E. P. & L. financial exhibits and calculations of discount rates and present worths, substantially in the form subsequently used in these proceedings. These were studied by Hopkinson over the week-end in detail, including checking the exhibits with the text and with the prior drafts of text. After this had been done and certain additional points for discussion had been noted on the new drafts, Hopkinson destroyed the old drafts, Part I and exhibits of 8/1; Part II and draft of exhibits 7/30, and Part IV, without exhibits, 7/26.

On August 5th, on returning to Philadelphia, Hopkinson received a note from Talmage, dated August 1st, accompanied by some additional Jirgal exhibits, showing yields, etc. on medium sized and metropolitan electric companies, assorted groups of companies in the natural and mixed gas field, and additional E. P. & L. exhibits, having to do with the estimated income of the new ALMNO company, *pro forma* for 1946 and estimated for 1947-50 inclusive.

Hopkinson had a long telephone conversation that morning with Messrs. Talmage and Colt, going over the additional points marked for discussion in Hopkinson's re-study of the drafts and exhibits, and certain points which Colt and Talmage raised as a result of further study in their organization. These revisions were to be incorporated in new drafts of the pages in question and

the exhibits involved, and it was arranged that Messrs. Talmage, Colt and Burton should come to Philadelphia on the 1 o'clock train to continue the work. Later Talmage telephoned that none of them would be able to catch anything before the 3 o'clock train, but that Dixon or Jirgal might be able to come over earlier to work with Hopkinson. Jirgal arrived shortly after 3 o'clock, and he (R-3, 161) and Hopkinson spent about an hour going over certain portions of his proposed testimony, having to do particularly with "present worth" calculations. Shortly after Jirgal left Hopkinson received a telephone call that the E. B. & S. group were to be at The Warwick, and requested Hopkinson to join them there, which he did, and remained there, working with them until about 6:15.

On August 6th, 1946, the hearing before SEC convened at 10 o'clock, and Hopkinson attended through Jirgal's direct testimony, which was completed shortly after 3 o'clock. For Jirgal's testimony, see Transcript, pages 1843 to 1927. Hopkinson took the stand next, and occupied the rest of the day until adjournment at 5 P. M., see Transcript, pages 1927 to 1959. During Jirgal's testimony, Electric's exhibits E-23 to 82 inclusive were incorporated in the record, and during Hopkinson's testimony Bond and Share's exhibits, 12-A to 12-G inclusive, 12-H to 12-H-3 inclusive, 12-J to 12-J-6 inclusive, and 12-I were introduced.

On August 7th, Hopkinson met with the E. B. & S. group at The Warwick at 9 o'clock, and discussed some last minute supplementation to the testimony, having particularly to do with the explanation for not applying the same mathematical discount factor to the \$7 and \$6 Preferred. It was agreed that an interpolation should be made in the testimony, pointing out the reason for this, which was that an application of straight rates to both classes of stock should be adjusted for the slightly lower yield basis and higher price at which the \$6 Preferred would sell in comparison with the \$7 Preferred.

Hopkinson's direct testimony was concluded about 12 o'clock; Transcript, pages 1963 to 2036. During this testimony E. B. & S. exhibits 12-A, 12-K, 12-L, 12-M, 12-N, 12-O, 12-P, Q1 to 4 inclusive, 12R-1 and 2, 12-S, 13 to 13-I, 14 to 20, 21, 22 to 22-G and 23 were introduced. Hopkinson remained at the hearing until the luncheon recess, then joined the E. B. & S. group for luncheon to discuss further preparation of supporting material for Hopkinson's cross-examination.

On August 7th, Hopkinson received, with a memorandum from Burton, Part II of his testimony and a complete set of Electric exhibits, including Jirgal's. Burton requested that Hopkinson mail Talmage any duplicates of these exhibits in his file, which was done with Hopkinson's letter to Talmage, under (R-3, 162) date of August 7th.

Hopkinson went to New York on the 12 o'clock train on August 9th, and after certain other business joined Messrs. Colt, Talmage and Burton at the E. B. & S. offices, to prepare for cross-examination, returning to Philadelphia on the 5 P. M. Reading train.

Saturday morning, August 10th, Hopkinson re-read the record of his direct testimony and noted such corrections as were required. Hopkinson spent about half the day on Sunday, August 11th, going over further material for cross-examination.

As arranged at the meeting in New York on August 9th, a package of material was sent to Hopkinson for study over the week-end at Atlantic City. All of Monday afternoon, August 12th, with the exception of a short interval, Hopkinson worked with the E. B. & S. group in Philadelphia.

On Tuesday, August 13th, Hopkinson joined the E. B. & S. group for luncheon and stayed through the afternoon session of the hearings, for Jirgal's cross-examination, which started at 2 P. M. and continued until about 5 o'clock. At this session Hopkinson took 6 pages of notes

regarding the important points brought out in Jirgal's cross-examination, for subsequent discussion and consideration as to possible points of differences with Hopkinson's own testimony or planned answers on cross-examination. For Jirgal's short re-direct and cross-examination, see Transcript, pages 2152 to 2217 inclusive.

On Wednesday, August 14th, Hopkinson met with the E. B. & S. group at The Warwick before going to the hearings, which lasted all day Wednesday, with a night session. Hopkinson was reached shortly after 9 P. M. and continued on the stand until 9:45. During Jirgal's further cross-examination, Hopkinson took 2 additional pages of pencilled notes, numbered 7 and 8. (For these notes, see Document File No. 26.) (For Wednesday's testimony, see Transcript, pages 2223 to 2446, for Jirgal's and pages 2446 to 2456 for Hopkinson's.)

On Thursday morning, August 15th, Hopkinson again joined the E. B. & S. group at The Warwick before the hearing, to discuss certain questions regarding possible cross-examination, particularly a clarification of present worth theories and one-stock plans. Hopkinson continued through the whole day until adjournment about 6 P. M. (See Transcript, pages 2460 to 2637.)

(R-3, 163) Hopkinson attended the hearings on Friday, August 16th, 1946, when Burke of Duff & Phelps took the stand for direct examination, which continued until adjournment about 4:30. See Transcript, pages 2638 to 2792 inclusive. In the course of direct examination, Burke had referred to Duff & Phelps reports to clients, and in his preferred stock evaluation he listed certain preferred stocks he had used in comparison, together with the Duff & Phelps rating of such stocks. The attorneys for the Commission, E. P. & L. and E. B. & S., all demanded the production of the reports in question and after considerable discussion Burke agreed to produce them. At the conclusion of the hearing, in an off-the-record discussion, Burke agreed that Drexel & Co., a subscriber to the Duff

& Phelps service, should make available their copies within the scope of the material he had agreed to produce so as to save time in getting ready for cross-examination. After the hearing, Colt came back to Drexel & Co.'s offices and the relevant material was sorted out and given to Colt to take to New York. (Hopkinson's notes on Burke's direct and cross-examination are included in the Document File No. 27.)

Hopkinson read over the week-end and on the train returning from Washington where he spent Monday, August 19th, the transcript of his cross-examination and made the necessary notations for corrections.

On Tuesday afternoon, August 20th, Hopkinson met the E. B. & S. group at The Warwick at 2:15 o'clock, and spent the entire afternoon discussing Burke's cross-examination and certain material for possible re-direct having to do with bringing earnings down to date and the best method of attacking Burke's exhibit of alleged comparable companies.

On August 21st, Hopkinson again met the E. B. & S. group at The Warwick at 9 o'clock, and reviewed drafts of cross-examination of Burke and other material which had been prepared pursuant to the discussion the day before. Certain minor revisions and opportunities for supplementation were agreed upon, particularly the part of it leading up to and dealing with Duff & Phelps bulletins on the new system companies in February and May, 1946, the model prepared to illustrate the yield, times earnings and payout percentage completely demonstrating the lack of comparability in about two-thirds of the companies included in Burke's chart. Hopkinson went with the group to the resumption of (R-3, 164) hearings at 10 o'clock, and remained during the first part of Calder's cross-examination, about 11 o'clock, and then returned to the hearings about 4:45 in the afternoon, at which time Dixon was being cross-examined. The hearings recessed about 5:15 and reconvened for an evening session at 7:30 and



continued until 10:30 P. M. During the dinner recess Hopkinson returned to The Warwick with the E. B. & S. group and went over the further revisions in the material which had been prepared, and also discussed the policies involved with Messrs. Dixon, James and Jirgal.

On Thursday, August 22nd, the hearings were not re-convened until 2 P. M., but Hopkinson spent the entire morning on the case, first meeting Colt at Hopkinson's office, reviewing and supplementing market price data and assembling material for re-direct examination of Hopkinson. About 11:15 Hopkinson went to The Warwick and joined Messrs. Talmage, Boone and the others, and discussed the program through luncheon and until the hearing started about 2 P. M. with Burke's cross-examination. Over night the transcript of the August 21st proceedings was reviewed by Hopkinson, pages 2793 to 3068 inclusive.

This session completed Burke's cross-examination and the re-direct and re-cross examination of Dixon and Hopkinson. In the course of Hopkinson's re-direct examination, E. B. & S.'s exhibits 27, 27-A, 27-B and 28 were put in evidence. Exhibit 27 was a 3-dimensional chart showing the relationship of market price and times earnings, indicated dividend rate and per cent of available earnings and yield of the new electric company shown in E. B. & S.'s exhibit 13, and the companies shown in Jackson exhibit No. 9.

Exhibit 27-A was a "backup" exhibit containing the data from which the chart had been plotted, and exhibit 27-B was a comparison of the companies used in the Burke and Hopkinson indexes, with dividend payouts in the 65-80% range of earnings, together with the ALMNO System, whose payout was computed at 74%. E. B. & S. exhibit 28 was a comparison of the companies used by Hopkinson and the companies used by Burke, showing market price, dividend and yield as of May 15, 1946, and as of July 31, 1946, indicating that as a result of the market decline between the two dates, the Hopkinson

composite average had gone from 4.10 to 4.37 and the Burke from 4.53 to 4.69.

(R-3, 165) Hopkinson read the transcript of the August 22nd testimony over the week-end, August 24-25th, and on August 26th sent a memorandum to Boone noting a few corrections in Hopkinson's testimony.

On August 28th, Boone advised Hopkinson of the dates fixed by the SEC staff for filing of briefs.

Pursuant to a telephone conversation between Hopkinson and Boone, a copy of proof of Brief on behalf of E. P. & L. and E. B. & S. (proof of September 5, 1946) was left by hand at Hopkinson's office, and it was arranged that Hopkinson would study it over night and discuss it with Boone on the telephone the next day, which was done, and certain suggested changes were discussed and queries raised by Hopkinson. This proof covered 37 printed pages, with a number of typewritten inserts.

On September 9th, 1946, Hopkinson attended a group meeting in the E. B. & S. Board Room, to discuss revisions of the joint Brief. The proof of September 5th was thoroughly discussed and a number of additional riders and comments considered. The meeting adjourned about 4:30 P. M.

On Tuesday, September 10th, Hopkinson received by hand a revised proof of Brief (proof of September 10th), which he took home and studied over night, noting certain suggestions. The same afternoon Hopkinson had a telephone conversation with Ginsburg regarding the subject, particularly certain typewritten substitutes which reached Hopkinson the morning of September 11th, with copy of Boone's letter to James of the same day. Boone requested Hopkinson to telephone him on Wednesday morning, the 11th, which he did, and communicated to him the further suggestions as developed in his study of the night before. This proof of September 10th covered 45 printed pages, with the supplemental typewritten material (1¼ pages) referred to.

On September 12th, Hopkinson received by hand in the early afternoon, a revised proof of September 12th, which he immediately checked, particularly as to the parts which had been subject to further revision, and telephoned Burton only two comments, approving the balance of the material.

Oral argument was had on September 20th, 1946, but Hopkinson was unable to attend it on account of an out-of-town engagement. However, he was furnished with a copy of the transcript, which he read. This contained 113 pages.

(R-3, 166) During the period following the argument, there was a definite hiatus awaiting a decision by the SEC.

On February 14th, 1947, Walker telephoned Hopkinson and the same day sent him a 2-page memorandum prepared by Percival Jackson, discussing a possible compromise plan, offering to preferred and common stockholders ( $\frac{2}{3}$  to preferred and  $\frac{1}{3}$  to common stockholders) the right to purchase United Gas Common at \$15 per share, but permitting the preferred stockholders to exercise their rights by tendering the preferred stock at the call price plus unpaid and accrued dividends in payment for the United Gas stock. After study by Hopkinson and Lee (partner of Drexel & Co.) the conclusion was reached, and Walker was advised, that in Drexel & Co.'s opinion it was not fair.

On April 16th, 1947, Hopkinson received from Ginsburg, with letter of April 15th, an outline consisting of 10 typewritten pages, prepared by Dixon, of four possible plans, one of which might be substituted for the present plan of E. P. & L., and requested Hopkinson to study them and advise as to which seems most workable and feasible, or any alternative plan that Hopkinson might develop from them. These were studied and the subject of telephone conversations between Hopkinson and the E. B. & S. group. As a result, the proposals for amend-

ment were re-drafted and new copies sent to Hopkinson, with Ginsburg's letter of April 17th. These, upon receipt, were reviewed by Hopkinson and the changes from the original proposals checked. The redraft consisted of 11 pages.

On April 21st, Hopkinson went to New York on the 2 o'clock train, and met with Messrs, Calder, Walker and Ginsburg. The alternative proposals were considered and the general situation discussed, preliminary to a conference scheduled for the next day between Messrs. Calder and Dixon and members of the SEC staff. The meeting lasted until about 5:15 P. M.

On May 12th, Walker sent Hopkinson a photostat of an article in the "New York World-Telegram" of May 6th, entitled "South's Power Use to Treble by 1970".

Walker sent Hopkinson a copy of his memorandum to Ginsburg, dated August 7th, 1947, entitled "Electric Power & Light Corporation", referring to the organization of Central and Southwest Corporation and its possible use as a precedent and the yardstick to proceeding with the formation of ALMNO independent (R-3, 167) of the rest of the Electric plan.

E. B. & S. also sent Hopkinson a copy of Goodbody & Co.'s study of Electric Power & Light, under date of August 27, 1947, which Hopkinson reviewed.

During this period conversations were had from time to time between Hopkinson and particularly Ginsburg, regarding the possible modification of the E. P. & L. plan, and the possibility of stepping up the payments on account of dividend arrears on the preferred stocks.

Under date of October 1st, 1947, Walker sent Hopkinson a 2-page memorandum of even date, describing "A Possible Method of Reducing Procedural Delay" in connection with filing an amendment to the present plan, substituting for the 60% voluntary exchange offer an allocation of ALMNO and United Gas stock, plus cash, on the

basis to be filed after SEC and Court approval of the basic plan. The second amendment (step 2) after SEC and the Court have approved the basic framework of the plan, would set forth the exchange ratios and a subsequent hearing would then be limited to the single question as to the fairness and equitableness of the allocation of assets.

A conference at the SEC had been arranged to be held on Monday, October 6th, 1947, to be attended by representatives of both E. B. & S. and E. P. & L. In preparation for this meeting Hopkinson was furnished with a folder containing

Electric Power & Light earnings (12 mos. July 1947)

Almno Balance Sheet

Valuations—United Gas and Almno

Present Worth of Preferreds

“Package” Allocations (9/9/47)

which was reviewed and studied by Hopkinson. Hopkinson was unable to attend the meeting at the last minute, but joined the E. B. & S. group at The Warwick afterwards in response to a telephone call from Walker, and was brought up to date on the morning's discussion. The staff expressed the view that a complete enforced exchange plan should be developed, which was agreeable to Hopkinson and the E. B. & S. group although the E. P. & L. group reserved the right of further discussion of a voluntary exchange plan. (For this folder, see Document File No. 28.)

With letter of October 10th, Ginsburg sent Hopkinson 4 sheets of tabulations, showing the market value of various possible packages of securities, (R-3, 168) to be exchanged for the \$7 Preferred Stock, and the earnings and dividends on the securities in various packages. There was also included, as one sheet, a calculation showing the amount which would be realized out of the reorganization

by E. B. & S. on the basis of each of the packages, and the basis of valuing United Gas at \$18.50 and ALMNO at \$17.50. (See Document File No. 29.)

Under date of November 13th, 1947, Percival Jackson wrote a letter to Morton E. Yohalem, Esq., protesting against the delay in a decision on the plan. Walker sent Hopkinson a copy of this letter, with memorandum of December 4th.

On January 5, 1948, Walker sent Hopkinson a tabulation which had been prepared to show the effect of the distribution of United Gas and ALMNO to E. P. & L. preferred stockholders on various bases, stating, however, that this was being revised to show the operating management's estimates for 1948; that is, \$1.50 earnings for United Gas and \$1.80 for ALMNO.

During this week, Hopkinson had several telephone talks with Walker regarding conversations which were taking place regarding a revised plan for E. P. & L., and studied the tabulations which had accompanied the letter of January 5th. Hopkinson also had re-priced, as of January 6th, the previous exhibits containing market price comparisons (prices as of November 13, 1947), and the yields re-calculated on the basis of January 6th markets. The average yield on the index of high-grade electric companies had increased from 5.24% to 5.38%, and on the medium grade electric companies from 6.61 to 6.68%. The yield on the natural gas company stocks had increased from 5.16% to 5.50%, and the yield on the 8 companies used by Hopkinson for comparison with ALMNO had increased from 5.87% to 5.95%.

A meeting was held at the E. B. & S. offices in New York on Friday, January 9th, 1948, at 9:45 A. M., and there were present Messrs. Calder, Walker, Ginsburg, Talmage, Boone and Hopkinson. Calder brought the group up to date, reviewing the conversations he had had with Dixon and also certain conferences which had been held with the members of the SEC staff. The principal



points, upon which there seemed to be agreement, were that the cash alternatives should be eliminated and a single package made up of United Gas and ALMNO, and possibly some cash. The various alternatives were set forth on pages 1 and 2 of a new (R-3, 169) folder consolidating under one cover the information in revised form which had accompanied Walker's letter of January 5th. (This revised folder is incorporated in the Document File No. 30.) It was agreed that approximate markets of about 18 for United Gas and \$16.50 for ALMNO, as shown in Basis "C" on page 1, were realistic, and that the packages in nos. 2 and 3, with the probable elimination of the cash, or something between those two, were probably a realistic end result. The meeting continued through luncheon until about 3 P. M., and various methods of handling the option warrants were considered. The consensus of opinion was that the safest course to recommend for the present would be, that after the plan had become effective, the holders of option warrants would have a reasonable period within which to exercise their options and share in the distribution as common stockholders, there being a cut-off after such period.

It had been agreed at the meeting on January 9th, 1948, that the recommendations of the group should be incorporated in a letter to be sent by Calder to Dixon. A draft of this was received by Hopkinson by special delivery at home on Sunday, January 11th. This was carefully reviewed by Hopkinson, who telephoned Talmage Monday morning, January 12th, making certain suggestions for revision as indicated on Hopkinson's copy of the letter. (See Document File No. 31.)

Talmage also communicated to Hopkinson certain changes they were discussing and the elimination of certain sentences. Subsequently Hopkinson talked to Calder and expressed satisfaction with the draft, as revised.

On January 16th, Hopkinson received a copy of the letter from Calder to Dixon, under date of January 12th,

and read the same, checking it with the corrections noted on the earlier draft. (See Document File No. 32.)

During February, 1948, there were discussions as to making a step towards eventual settlement by a partial distribution to both preferred and common stockholders, and on February 26th, Hopkinson received with letter from Walker, dated February 25th, an outline entitled "Proposed Plan of Electric Bond and Share Company under Section 11(e), dated March 1, 1948". This was accompanied by a 2-page memorandum outlining "The advantages to Electric Power & Light Preferred Stockholders of a Partial Distribution of United Gas". (LG (Ginsburg) 2/25/48. Document File No. 33.) The outline, in substance, provided for a first (R-3, 170) step in the liquidation of Electric through distributing 6 shares United Gas stock to the holder of each share of all classes of preferred stock, and to the holders of Electric common stock 1 share United Gas, leaving for ultimate determination the additional shares to be given the preferred stockholders, and the treatment for the option warrants. This was studied by Hopkinson and discussed over the telephone with Walker on March 3rd.

The use of a convertible dividend preference stock of United Gas and debentures of ALMNO was again under discussion with Duff & Phelps, and Walker sent to Hopkinson with his memorandum of March 3rd, a suggested plan prepared by Duff & Phelps, under date of February 28, 1948, along these lines, using convertible senior securities to satisfy the claims of the 1st and 2nd preferred stock. (See Document File No. 34.)

On March 8th, 1948, Hopkinson attended a meeting at the E. B. & S. offices in New York, at 2 P. M., with Messrs. Calder, Walker, Lampe and Colt, where the Stathas plan, above referred to, dated 2/28, was particularly discussed. Messrs. Colt and Lampe had prepared various calculations showing modifications of the Stathas program, reducing the amount of preference common to

be put on United Gas, so as to give to the \$7 Preferred 6 to 6½ shares instead of 8.2 shares as in the Stathas memorandum. The fundamental disadvantage of this approach, using a large percentage of United Gas to take out the preferreds, was discussed in the light of the impossibility of E. B. & S. retaining ALMNO, of which, under the Stathas plan, they would receive a much larger percentage and a smaller percentage of United Gas, which they might well be permitted to retain. The Stathas proposal fixed the rate of 4½% on the debentures, which was criticized as high, but to substantially cut it reduced the immediate income to the preferred stockholder. A possible compromise was discussed of 4% interest on the debentures, and making them callable at par after a short period. The possibilities of approval of this type of plan by SEC was also discussed, and whether the desired amount of preference common on United Gas did not create a top heavy structure, unless the circumstances were such as to indicate the probable conversion of a substantial amount into common stock immediately. This did not seem likely to happen on the projected \$1 dividend for United Gas.

(R-3, 171) On March 12th, 1948, Walker telephoned Hopkinson and reported a talk he had with Stathas of Duff & Phelps, on March 9th. As a result of this talk, a tentative plan involving for each share of \$7 Preferred 5½ shares United Gas \$1 Dividend Convertible Preference (callable at 21) and 4½ shares ALMNO Common, were to be used thereby eliminating the proposed ALMNO debentures, which we did not believe would be approved by SEC. Using the previous relationships between the different classes of preferreds, this would involve re-classification of 4,494,000 shares into the preference stock out of 10,653,302 common shares outstanding. Stathas estimated a tentative value of 19 for the new preference stock. The earnings of United Gas for 1947 were expected to be approximately \$1.50, and the estimates for 1948 \$1.70. It

was agreed that Drexel & Co. would set up United Gas, giving effect to this change in its capital structure, and comparing it with Philadelphia Electric and Public Service Corporation of New Jersey. Walker told Stathas that E. B. & S. would go along with an attempt to secure the approval of a plan on this basis by SEC only if the Jackson Committee would actively support it. Hopkinson immediately arranged with Lee and Casperson, of Drexel, to set up the desired material, so that it might be taken to New York for a meeting which was arranged for Monday afternoon, March 15th, 1948, at the E. B. & S. offices, at 3:30 o'clock.

Hopkinson attended the meeting in the E. B. & S. offices on Monday, March 15th, 1948, at which there was also present Messrs. Calder, Walker and Ginsburg. Hopkinson gave them several copies of the tabulation, above referred to, which had been prepared over the week-end, comparing a set-up for convertible dividend preference stock in the United Gas capital structure with relation to the Public Service Electric & Gas and Philadelphia Electric. (See Document File No. 35 for this tabulation.) Only brief consideration was given to this in view of the fact that over the week-end Stathas reported he had been unable to secure the approval of the Jackson Committee to using a convertible preference common. It was reported that meetings had been held all morning in the E. P. & L. offices between their officers and counsel and Jackson, as a result of which they presented to Calder a proposal for settlement, based on  $6\frac{1}{2}$  shares United Gas Common and  $4\frac{1}{2}$  shares ALMNO. While the meeting was proceeding Stathas telephoned from Chicago that he had consulted some of Duff & Phelps (R-3, 172) important clients who would be willing to support such a compromise on the basis of  $6\frac{3}{4}$  shares United Gas and might go along on the  $6\frac{1}{2}$  share basis, if that was the best that could be done. On the whole, the group were inclined to accept this compromise settlement if everybody would support it, but if

there was to be a fight against it by any substantial interest, there seemed to be little advantage in agreeing to it. It was agreed that the matter would have to be presented to the E. B. & S. Board.

Hopkinson discussed the status of the compromise negotiations with Calder on the telephone on March 23rd, and was informed that nothing had been settled yet but that he was having a meeting with the E. P. & L. group that afternoon.

With the letter of March 30th, Ginsburg sent Hopkinson a copy of the compromise plan as filed by Electric, using  $6\frac{1}{2}$  shares United Gas stock and  $4\frac{1}{2}$  shares ALMNO, as above discussed, together with Order of SEC reconvening the hearings on April 14th. These documents were read by Hopkinson on Sunday, April 4th.

Under date of April 21st, 1948, Hopkinson prepared a form of letter to be sent to security dealers for the purpose of transmitting to the holders of the preferred stock an authorization supporting the plan. (See Document File No. 36.)

Under date of May 12th, 1948, Talmage sent Hopkinson a memorandum—"Memorandum from Mr. C. E. Calder, dated May 11, 1948, in re Electric Power & Light Plan—Hearing before SEC". This memorandum reviewed the testimony, direct and cross, given by Calder at the earlier hearings regarding allocations and, on May 14th, Talmage and Hopkinson discussed this on the phone, particularly anticipating possible questions on cross-examination. This memorandum, which was prepared by Boone, contained 15 typewritten pages, and 2 supplemental pages.

This completed Hopkinson's active participation in the development of the plan, although with letter of September 9th, 1948, James sent Hopkinson a copy of the Public Utilities Division's recommendation for Findings and Opinion to be issued by the Commission, together with a copy of his Brief and proposed Findings and Conclusions in support of the application for approval of the plan.



(R-3, 173) In conclusion, it should be stated that Hopkinson read the entire voluminous record in this case, examined all of the exhibits put in by United Gas, Electric Power & Light and Bond and Share, and read many pages of the testimony of Joe Gill given in the earlier proceedings in the reorganization of United Gas and a great mass of other material having to do with the potentialities of "growth" in the use of natural gas, not only as a fuel but in the petro-chemical field.

In addition, Hopkinson's partners, Messrs. York, Lee and Gates, as appears from the foregoing, from time to time worked on the case. It also appears from the foregoing that a substantial amount of statistical research was done by members of Drexel & Co.'s Statistical Department.

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#### TRANSCRIPT OF TESTIMONY.

(R-2, 6) MR. FINK:—I should also like to state that the procedure, I think, might most expeditiously dispose of these proceedings is that counsel on direct examination state any matters which are supplemental to the affidavits heretofore filed in support of the applications, that if there are no supplemental matters to be set forth, such counsel submit themselves for cross examination. I think it is unnecessary to restate the affidavits which are already in the docket and which are sworn to, or counsel may, if they wish, state that they would, if they were to testify, testify substantially (R-2, 7) to what has already been submitted in this.

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(R-2, 152) MR. BOONE:—I appear here in behalf of Bond and Share. We are seeking the approval of the payment of the fees of Reid & Priest, Benjamin T. Brooks, Ralph E. Davis. Drexel & Co., and Ebasco Services, Inc.

Mr. Reporter, will you kindly mark as Electric Bond



and Share Exhibit F-3 an instrument in the Docket entitled "Petition by Electric Bond and Share Company for Approval of Payment of Fees and Expenses." Mr. Fink, with your permission and Mr. James', I would like to amend that document by deleting the name "Edward Hopkinson, Jr." in paragraph 2 thereof and substituting for that name at the same place in said paragraph the name of Drexel & Co.

Mr. Examiner, I offer Electric Bond and Share Company's Exhibit F-3 in evidence.

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(R-2, 153) HEARING EXAMINER:—It is admitted as Exhibit F-3.

(Electric Bond and Share Exhibit F-3 received in evidence.)

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(R-2, 154) MR. BOONE:—Mr. Examiner, I ask the reporter to mark as Electric Bond and Share Exhibit F-5 an instrument in the docket entitled "Petition by Drexel & Co. for Approval of Fees for Services on Behalf of Electric Bond and Share Company," and that bears the verification date of April 3, 1950. Attached to this exhibit is a statement by Drexel & Co. descriptive of the services of Drexel & Co.

HEARING EXAMINER:—It is admitted as Electric Bond and Share Exhibit F-5.

(Electric Bond and Share Exhibit F-5 was received in evidence.)

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(R-2, 156) MR. BOONE:—In connection with Ebasco Services.

It is my understanding, am I correct, Mr. Hopkinson, that Drexel & Co. desires that the petition and affidavit which you have filed shall constitute that firm's direct evidence.

MR. HOPKINSON:—Yes, sir.

MR. BOONE:—In support of its fee.

Thank you very much. And we may continue tomorrow morning.

HEARING EXAMINER:—These affidavits are received as so described.

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(R-2, 198) MR. BOONE:—That is what we are going to do right now. Bond and Share has really filed two petitions here, one for the approval of claims against it, and in the first instance these claimants will be paid by Bond and Share. Then there is another application which is for the reimbursement of the fees which are approved by the Commission. I think we have set it up in a logical way.

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(R-2, 200) MR. BOONE:—Yes, they are. That is correct. We have to prove those fees. There are five fees we have to prove before Bond and Share can really pay those applicants or those applicants their fees, that is Ebasco Services, Reid and Priest, Dr. Brooks, Ralph E. Davis and Mr. Hopkinson. Mr. Hopkinson, Drexel and Company—Mr. Dixon calls my attention to the fact that it is Drexel and Company, instead of Mr. Hopkinson.

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(R-2, 202) MR. BOONE:—I agree with the last statement, Mr. Examiner. If the Commission approves the fees of the five claimants here, Bond and Share will pay those fees.

HEARING EXAMINER:—It has not paid them yet?

MR. BOONE:—Some of them they have paid, yes. You are correct.

HEARING EXAMINER:—For this purpose they are treated as unpaid?

MR. BOONE:—That is correct. If the Commission does not as a legal matter hold that Bond and Share is entitled to reimbursement from Electric estate then Bond and Share stands the whole thing.

(R-2, 203) HEARING EXAMINER:—What you mean is this, if the Commission does not hold as a legal matter that the claims of these parties are good against the Electric estate, utterly irrespective of who has made them for the time being, that then Bond and Share would have to assume the responsibility of paying them?

MR. BOONE:—That is right.

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(R-2, 227) EDWARD HOPKINSON, JR., was called as a witness, and having been first duly sworn, was examined and testified as follows:

MR. BOONE:—Mr. Hopkinson is available for cross examination.

*Cross Examination.*

By MR. FINK:

Q. Mr. Hopkinson, you are generally financial advisor to Electric Bond and Share Company, are you not?

A. I would not want to say generally. I have been asked to advise them about specific matters, such as Electric Power & Light, and their own plans for simplifying their corporate structure, retiring the preferred and I have done some work in American Power and Light and American and Foreign Power, but I have no general relationship to them.

Q. And you have been engaged in consulting and advising Electric Bond and Share Company since 1945, is that correct?

A. May 3, 1945, was the first meeting I had with them.

Q. You did not act as an advisor to Bond and Share on the United Gas proceedings?

A. No, sir. I subsequently had to familiarize myself with a good deal of those proceedings as background for the (R-2, 228) work that I was doing in Electric Power and Light, but I had no part in the proceedings at the time they were going on.

Q. You have been called upon to advise Bond and Share in connection with specific plan proceedings affecting Electric Power and Light, American Power and Light, American and Foreign Power, is that correct?

A. Yes.

Q. And the general and Plans H-A and H-B of Electric Bond and Share?

A. Yes, that had to do with getting rid of their own preferred stock.

Q. And Plan III and the amended Plan III of Electric Bond and Share?

A. Yes, sir.

Q. In addition to that, have you acted as financial advisor to Electric Bond and Share Company with respect to their general problems or to general problems not related to specific reorganization plans?

A. No, sir. Well, I think I ought to qualify that perhaps to a slight extent. When the problem of marketing their holdings of Carolina Power and Light stock were under consideration, I attended one or two conferences with the staff down here with regard to the timing and the amount of that stock that should be sold.

Q. It would be correct, then, to say, would it not, that (R-2, 229) since 1945, since you commenced your relationship with Bond and Share in 1945, you have acted as advisor on all major problems of reorganization under the Holding Company Act?

A. Well, I never had anything whatever to do with the question of settlement of claims between Bond and Share and the other companies, and I imagine most of the things that have been referred to here did constitute their major problems. There are other steps they have taken from time to time with regard to distribution of securities and so on about which I have had no part.

Q. Can you state, Mr. Hopkinson, what compensation has been received by you and when I say you, I mean Drexel and Company or you, interchangeably, from Bond and Share, during this period for services rendered?

A. There have been no payments from Bond and Share whatever except one payment I think which was approved by an order of the Commission several years ago in connection with their Plan I.

Q. And are there any applications presently pending for compensation other than this?

A. No.

Q. And have you received payments on account of services?

A. No, sir.

Q. During this period?

A. No, sir.

(R-2, 230) Q. It is expected, however, that there will be at the appropriate time compensation for services rendered in connection with the various proceedings that you have enumerated?

A. Yes, sir.

Q. It is correct, is it not, that in the very nature of the problems of Electric Bond and Share that there is some difficulty in allocating a particular task to a particular problem of Bond and Share?

A. Not so far as my work has been concerned.

Q. So far as your work is concerned, each particular project on which you have been engaged is definitely capable of being pigeon holed into a particular category or case?

A. Yes, sir.

Q. Initially you were called upon to consult with Bond and Share, were you not, concerning the possibility of formulation of a reorganization plan for Electric Power & Light, is that correct?

A. And I think at the same time there was mentioned the fact that Bond and Share had the problem of developing a plan for the retirement of its own preferred stocks, which it was under from the Commission to do. I think both of those matters were mentioned as the two things that would require earliest attention. I think probably

I was told that there were also these proceedings involving American and Foreign (R-2, 231) at the same time, but I don't think there was anything done about them right away.

Q. You recall, do you not, that in connection with the plan, one proceedings of Bond and Share, the \$30 you recall the Plan I proceedings of Electric Bond and Share, the \$30 payment?

A. Yes, sir.

Q. Did you advise Bond and Share with respect to that?

A. Yes, sir, I assisted in the preparation of that plan.

Q. And you recall that at that time the Commission indicated that Bond and Share should set forth a program for its own ultimate compliance with the Holding Company Act?

A. Yes, sir.

Q. And that Bond and Share approximately in July 1945 set forth Plans 1, II and III, for the retirement of the preferred stocks and for itself?

A. I would not recall whether it was the month of July or it was some time after May.

Q. Were not your discussions with Bond and Share, and your services rendered to Bond and Share in connection with Electric a necessary part of Bond and Share's own program of compliance with the Holding Company Act?

A. Well, it was certainly only incidental in the same sense as they were under orders in connection with their other (R-2, 232) domestic utility assets, but the work that was done in setting up one plan was always entirely distinct from the problem of how Electric was to simplify its own capital structure, prior to whatever Bond and Share might have to do with the securities they received out of that reorganization.

Q. But of course you agree that Bond and Share could not embark upon any policy for its own reorganiza-



tion other than capital structure reorganization until the problems of the subsidiary holding companies were resolved.

A. I think I understood from the lawyers that Bond and Share would probably not be permitted to distribute or otherwise dispose of securities of some holding companies that were still in process of reorganization. I had no independent judgment about that.

Q. So that your answer would be that if you relied upon the information given you by the lawyers, that Bond and Share could not carry out its own plans for reorganization until the problems of the subsidiary holding companies were resolved——

A. If you mean by reorganization, the divestment of interests in those sub holding companies, I think that would be correct.

Q. That is correct, and of course those divestments could not be accomplished until the subsidiary holding companies were reorganized or that the reorganization take place as part of the divestment.

(R-2, 233) A. That is my understanding of the lawyers' judgment in the matter.

Q. And in that connection of course it was necessary for you in order to properly advise Bond and Share as to its own policy with respect to its own problems, you had to be familiar with the nature and operations, characteristics, functions, and so forth, of the subsidiary holding companies and their underlying operating properties, is that correct?

A. Well, I don't think particularly so, until it came down to the question of evaluating the investment worth of the Bond and Share preferreds with relation to the premium problem. There of course to the extent you were not already familiar with Bond and Share's portfolio, you would have had to make an independent study of that portfolio for that purpose.

Q. Do you recall the proceedings entitled Plan II-A of Electric Bond and Share Company?

A. Yes.

Q. That was the plan whereby the \$70 payment was made on the preferred stocks, thereby retiring them at principal amount?

A. Yes.

Q. And you testified in those proceedings, did you not?

A. Yes.

Q. And was it your testimony in those proceedings the investment value of those preferred stocks, \$5 and \$6 preferred (R-2, 234) stock, was at least \$100?

A. Did not exceed 100.

Q. Did not exceed 100?

A. Yes.

Q. Whatever your testimony was, the record will speak for itself, as to whether it was at least or did not exceed.

A. Yes. I think there was quite a little examination and cross examination to clear up one phrase in my original testimony, which perhaps was not too clear and did not make it clear that the \$5 preferred was being given the same amount as the \$6 on the legal theory rather than on a factual appraisal of its investment value.

Q. I am not interested in retrying that case, and therefore I would like to have the testimony speak for itself. I merely asked that question as the predicate for the question, was not it then necessary for you in connection with those proceedings to evaluate the investment worth of the preferred stocks?

A. Yes.

Q. And when did you testify in those proceedings?

A. I can't recall the date; it will appear of record.

Q. About 1946. It was '46, because the findings were issued in September 1946. That is my recollection, September 7th.

A. It may be.

(R-2, 235) Q. So that during the period prior to your testimony in the II-A case, you had studied the investment worth of the Bond and Share preferred stocks?

A. Surely.

Q. That of course required a study of the underlying properties of Bond and Share.

A. To the extent that you were not already familiar with it, certainly it involved bringing up to date as of the date of the testimony all of the factual information regarding the earnings and earnings prospects of the portfolio assets of Bond and Share as of that time.

Q. And of course Electric Power and Light being one of the most substantial and one of the most valuable subsidiaries of Electric Bond and Share required knowledge of Electric Power & Light.

A. My testimony as to the weight given to Electric Power & Light in those proceedings was very fully covered in the case, and I would not want to try to summarize it in a few words.

Q. I should not ask you to, because I don't want to put you in the position of saying anything that may be used in connection with those proceedings.

So that whatever study you had given to Electric Power & Light situation prior to the time you started to prepare your analysis for the II-A proceedings of course was of value to (R-2, 236) you in the II-A proceedings.

A. Surely.

Q. If there had been no Electric Power & Light proceedings, you would have started from scratch with respect to Electric Power & Light for the II-A proceedings?

A. Well, from scratch to the extent that I did not already have a certain familiarity with the whole situation.

Q. But you would not have relied upon merely passing familiarity but would have sought to have made a thorough study for the purposes of that case?

A. Yes, surely.

Q. And that thorough study had been made in great

part at least in connection with the work you had done in connection with the Electric Power & Light proceedings, is that correct?

A. There is a good deal of the work that was done up to that date in connection with the Electric Power & Light which of course was of value to me as background material in the preparation for the testimony on the Bond and Share preferred.

Q. Of course that would be true with respect to the earnings prospects of United Gas Corporation on which you had done considerable work.

A. Well, I think if you review any testimony in the Bond and Share preferred stock cases, you will find that due to (R-2, 237) the uncertainties of what was going to come out of the Electric Power & Light reorganization at that time, I treated Bond and Share's interest in Electric Power & Light as a definite plus factor, but was very difficult, if not impossible to put any dollar mark either as to asset value or earnings until that reorganization might have been completed, which had not been at that time.

Q. I recall that testimony in the II-B case from reading it. It may also have been your testimony in the II-A case, but again the record will speak—

A. It would have been even more so in the II-A, because that was earlier.

MR. FINK:—In an off the record discussion, Mr. Ginsberg of Electric Bond and Share Company indicated that there may be confusion on the part of counsel as to the scope of testimony concerning investment value in the II-A as distinguished from the II-B proceedings of Electric Bond and Share. Accordingly, any answers given by Mr. Hopkinson with respect to what that testimony may have been in so far as substance is concerned will not be binding, but the record in those cases will speak for itself, and of course staff counsel and the Commission and any other counsel may go to those records for it, if relevant.

By MR. FINK:

Q. I note that you commenced your work for Electric (R-2, 238) Bond and Share on May 3, 1945. At that time no plan had been developed for Electric Power and Light; that is correct, is it not?

A. That is correct. I believe there had been some discussions between Electric Power & Light and Electric Bond and Share, but certainly there was no plan at that time.

Q. In that connection, were you advised by Electric Bond and Share Company or by its counsel that the Commission's order of dissolution directed against Electric was directed against Electric, and Bond and Share, and directed that Electric and Bond and Share take steps toward the elimination of Electric as a holding company?

A. I don't recall the precise words, but I understood that was one of the problems that my help was wanted in connection with what was the best and fairest and most expeditious way of accomplishing that result.

Q. And there was no question in your mind at the time you undertook the service, or since, that you were acting on behalf of the Electric Bond and Share Company, and not on behalf of Electric Power and Light Corporation?

A. Oh, completely.

Q. You were also aware of the fact, were you not, that Electric Bond and Share's principal position with respect to Electric Power & Light stemmed from its ownership of 57 per cent of the common stock of Electric Power & Light?

(R-2, 239) A. They also had some of the preferred stocks and option warrants, I think that is all in the record. I don't recall now the particular amount, but certainly their primary concern was the junior securities, rather than the preferreds, certainly the first preferreds.

Q. And that therefore from the position of a stockholder owning that, and therefore from the position of a security holder, their major interest would be in obtain-

ing as much as possible for the common stock of Electric Power & Light?

A. And the option warrants, as distinguished from the senior securities.

Q. Now, as an advisor to Electric Bond and Share in connection with what might be done to effectuate a program of compliance with the Holding Company Act, were you concerned with what might achieve the greatest amount for the common stock and therefore Bond and Share, or what might effectuate the most immediate compliance, quickest compliance with the Holding Company Act?

A. Well, I think you would have to balance the two things together, and also if I were going to be a witness and testify to my belief that a plan was fair and I would have to have that belief to support it, you would have to reach conclusions as to whether the preferred stocks also were being fairly treated, although you might not agree with some of the representatives of the preferred stock as to (R-2, 240) what constituted that treatment.

Q. And of course in this period, in this early period, of your relations with Bond and Share, were there not discussions had between you and the company indicating that the company's desire to embark on its own program of being an investment company, at as early a date as possible?

A. I don't recall much discussion in the early stages of this situation about the investment company phase of it. I think the primary weight was to find some way to assist in accomplishing the reorganization of these subholding companies and stop the payment of dividends or the accruing of dividends on their own preferred stocks.

Q. You say not in the early stage, but as things went on, did that become a more important consideration, that is, the problem of the eventual future of Bond and Share?

A. Well, that could only become a concrete problem as the reorganization of the subholding companies took shape



and it began to appear what Bond and Share was going to get out of the reorganizations, and before that, it was fairly academic, nothing you could even think about too much, so far as I was concerned.

Q. You do recall, however, that in 1945, June or July, Bond and Share filed its plans I, II and III, plan III of which set forth a general program, describing what Bond and Share hoped to be after the necessary dispositions were (R-2, 241) accomplished.

A. Yes, I remember that.

Q. And in the light of that announced policy, was it not necessary from the viewpoints of Bond and Share itself, to accomplish the reorganizations of its subsidiaries, as quickly as possible, in order that it might set its own house in order?

A. Well, that may have been very well a consideration as far as Bond and Share's general policies were concerned, I don't know, there was anything that I did or had to give much, if any, thought to at that time. Those were decisions really for the Bond and Share directors, not for me.

Q. You were not concerned then, were you, with what the purpose of internally your advising Bond and Share was at that time, that is, whether their motive was to have Electric reorganized in order that they might get on the roll themselves, or whether the motive was to get Electric reorganized for the purpose of effectuating compliance with the dissolution order of the Commission.

A. No. I don't remember participating in any particular discussions along those lines. I think the general matters of policy had been settled by the Bond and Share officers and directors, and they wanted my help in implementing them and carrying them out.

Q. In connection with the evolution of plans, tentative (R-2, 242) plans and discussions, were not you and Bond and Share concerned with the form a reorganization plan

might take in the light of what effect it might have upon the future policy of Electric Bond and Share?

A. I don't think I quite understand what your question expects me to answer.

Q. If it is not clear, I can restate it.

A. Will you?

Q. I was trying to cover a number of things, I think, in one question to avoid asking a number of them. Is there something about it that you do not understand, Mr. Hopkinson?

A. Frankly there is. If you could rephrase it or separate it into its parts, it might be easier to give responsive answers.

HEARING EXAMINER:—Do you want the question read again?

THE WITNESS:—I don't think that will help.

By MR. FINK:

Q. Would it have made any difference to you and to Bond and Share from your discussions with them as to what form a plan of reorganization took with respect to what securities Bond and Share might receive out of reorganization?

A. Well, surely we wanted to receive all that we fairly could and some forms of reorganization might be more appropriate to accomplish a good result than others. In fact, one of the causes for delay in this situation was difference of opinion (R-2, 243) between a variety of the parties as to the best way to go about reorganization, all being agreed that it was desirable objective to accomplish, but there was wide difference of opinion as to what was the best and most expeditious way to accomplish it.

Q. Were you and Bond and Share concerned about whether Bond and Share might get, say, Middle South out of reorganization, or United Gas out of reorganization, or parts of both, or neither?

A. Yes, but I would say at a rather later date than the one we have been talking about. The first studies

that we were involved in had to do with one stock plan. In other words, initially getting rid of the Electric Power & Light preferred by the so-called one stock route, and that we advised against for a variety of reasons, and then there were a whole series of studies for possibilities of voluntary plans and exchanges, either of United Gas in the first instance, or an alternative of United Gas and ALMNO, some of each before we finally got to the final enforced plan which provided for a package consisting of the two securities. At that time I think we had reached the conclusion that United Gas had the greater possibilities of future growth, and therefore we did not want to give all of that up to the preferred stockholders.

Q. Therefore, it was material whether Bond and Share from its own future policy might get, say, United Gas or (R-2, 244) might get Middle South, and that was a factor in the thinking as to what went into the plan.

A. At the later stages of the reorganization, there was certainly a definite judgment on my part that it was desirable to use the Electric properties to as great an extent as possible in discharging the claim of the preferred stockholders.

Q. And in that respect, assuming that fairness could be accomplished, by giving security holders either class of security, and each having the same value, the interest of Bond and Share in obtaining a particular class of securities would not be related to what was best for the class generally, or what was best for Electric Power & Light, would it, but rather would be concerned with what might be best for its long run policy?

A. Well, I think its long run policy would be identical with the interests of any other stockholder of the same securities.

Q. Is there any other stockholder of like class owning 57 per cent?

A. I think when you are looking at the long range growth possibilities of United Gas, the same for each

share of United Gas whether you had 57 per cent or one per cent of it.

Q. I am not sticking right now to the early period of discussions, but rather talking generally. The interest of (R-2, 245) Bond and Share in getting United Gas could be a different interest from that of the public stockholders, common stockholders of Electric Power & Light, might it not?

A. If you are hinting at the possibility of the question of retainability of United Gas as distinguished from the retainability of ALMNO, that is a problem I have heard the lawyers discuss, and I believe they felt there was some advantages in receiving United Gas under that in connection with that question. I have no personal opinion on that subject.

Q. But if Bond and Share wanted to retain United Gas, assuming United Gas and Middle South of equal value, they might make a decision with respect to the form of plan whereby they would retain United Gas for reasons different from those motivating the public common stockholders, is that correct?

A. That may be for the reasons I have indicated on the legal thing. My own judgment about the desirability of either Bond and Share, or the Bond and Share stockholders to whom they might have to distribute it, having United Gas, was based on my judgment as to the very attractive future growth possibilities of the natural gas industry during this period as distinguished from the more mature electric industry.

Q. You would agree then, would you not, that Bond and Share would at least have a two fold purpose so far as its formulating any plan of reorganization is concerned, one, the (R-2, 246) need of itself complying with an order directed against it for the dissolution of Electric, and two, to obtain out of the reorganization those securities which might be most consistent with the program it might seek to devise for its own future policy.

A. Well, as you will recall, in the plan which Bond and Share filed in '46, shortly after the Electric amendment to its plan was filed, they gave the preferred stockholders the choice up to the amount that was available of whether they would take United Gas or ALMNO.

Q. Yes, but that does not answer my question, Mr. Hopkinson.

A. It does not answer it completely, and it does get to the further point which I think really you ought to ask the lawyers, and not me, as to what difference, if any, they conceived in the relationship of their position with regard to the one stock or the other. I was interested in saving as much as possible of United Gas for Bond and Share, whether they might have a better chance of retaining that or whether it go to the Bond and Share stockholders ultimately in distribution.

Q. And that was purely on your own ideas of the value of United Gas?

A. The future growth possibilities.

Q. Future growth possibilities?

A. Yes.

(R 2, 247) Q. Not related to any corporate policy problem of Bond and Share?

A. No, because I urged that attitude towards United Gas long before I knew of any discussions on the other point.

Q. Well, your services to Bond and Share in connection with the Electric plan proceedings were not limited solely to what might be fair or might be feasible?

A. Well, I think that is a very narrow interpretation of the part I played in this proceeding.

Q. Weren't you engaged also to advise Bond and Share concerning what they might do with respect to Electric in so far as that might affect the future policy and program of Bond and Share.

A. Well, if you are again going back to this point of the alternate possibilities of retaining the United

Gas as against ALMNO, that was something that the lawyers dealt with and not me.

Q. Well, I don't think that is responsive to my question, Mr. Hopkinson. Perhaps we ought to read the question. I think that is susceptible of an answer.

(Question read.)

THE WITNESS:—Well, naturally in framing any plan for the elimination of the Electric preferreds, you had to consider the alternative securities which Electric had, which might be used as a vehicle of an exchange proceeding, whether proceeding (R-2, 248) by that route, whether voluntary or enforced. I do not know what your question means beyond that.

By MR. FINK:

Q. You were during this period of time from 1945 through the present, at least at various points, and more intensively, perhaps, as time went on, engaged in advising Bond and Share in discussing with them their own program of compliance with the Holding Company Act, and their own future policy, were you not?

A. Well, there was never any question about their having to dispose of the securities that they got out of the American reorganization within a certain time after the reorganization became effective, unless that time was extended. The emphasis on the Bond and Share program of compliance initially was how their own preferred stocks were to be gotten rid of so that, and their bank loans liquidated, so that they would be in position either to distribute or sell their other securities. Until it came to the formulation of Plan III, which was quite some time after the Electric reorganization was concerned, I would not think I had been primarily concerned with any question of the kind that you are asking about.

Q. Does that answer, does that last answer mean that up until after the consummation of the Electric plan, you were not engaged in advising Bond and Share, and discussing with (R-2, 249) them what course their future



policy might take and what kind of a company they might be upon completion of their program of compliance?

A. I don't recall any particular discussions along that line at that stage of the game.

MR. TARLAU:—What stage of the game was this?

THE WITNESS:—During the pendency of the Electric plans.

MR. TARLAU:—Throughout that.

MR. FINK:—My question was until after consummation of the Electric plan, and that is your answer, is that right?

THE WITNESS:—My work in connection with the Electric plan was really completed with the filing of the final six and one-half and four and one-half plan. I did not have to testify in the proceedings on that plan, and I don't think I did anything after that except read the copy of Mr. James' brief, which he was good enough to send me in connection with the enforcement order.

By MR. FINK:

Q. I want to make sure that we all understand you on this point, and if I labor it, bear with me. Your relations with Bond and Share, is this a fair statement, your relations with Bond and Share from 1945 until approximately in July 1949, the time of consummation of the Electric plan, embraced only advice concerning plans of reorganization of the subsidiary holding companies of Bond and Share plus certain financial (R-2, 250) advice with respect to dispositions, such as Carolina, and that you were not concerned in discussions with Bond and Share or advice to them concerning what kind of a program Bond and Share might follow upon completion of the program of compliance under the Holding Company Act?

A. My recollection would be that after the hearings on the retirement of preferred stocks had been completed, I had little, if anything, to do in the way of discussion.

or otherwise with Bond and Share regarding their own plan until shortly before Plan III was filed.

Q. You say preferred stocks. You refer to Bond and Share preferred stocks in that answer?

A. Yes.

MR. FINK:—Read that last answer.

(Answer read.)

By MR. FINK:

Q. Was it material in the testimony you gave in Plan II-B as to what Bond and Share might be like in the future?

A. I refused to speculate what Bond and Share might be like so far as the assets that it might receive out of the Electric Power & Light situation, because the Electric Power & Light reorganization at that time was in a state of complete confusion, and nobody knew where it was going.

Q. Were you familiar with the oft repeated statement that during this period that upon completion of the program (R-2, 251) of compliance Bond and Share would cease to be a holding company and would own certain securities, enumerating those securities?

A. Well, I am quite sure that I received copies of the communications that Bond and Share sent out to its stock holders and any press releases but I would not recall that I had any participation in framing them.

(R-2, 252) Q. Did Bond and Share discuss with you the advantages or disadvantages of its announced policy in Plan 3 as filed in 1945 and how it would and what it would do to get itself into position so that it might carry out that policy?

A. I recall working with Bond and Share on the preparation of the plan filed that you refer to, and it went through a number of proofs, but I wouldn't recall the substance of any conversations that took place then.

Q. Whether or not your thinking was influenced by what you might know of what Bond and Share's future

policy might be, certainly it is correct, is it not, that if you suggested a program for Electric which by reason of the securities to be allocated would be inimical to the policy Bond and Share desired to pursue, they would advise you of the faults from their viewpoint of such a policy, wouldn't they?

A. I don't think these plans were developed the way your question would imply about my pulling a plan out of the air and saying here is the plan you ought to file. I think these different plans and alternatives were threshed out in many days of conferences and draftsmanship and discussions.

Q. That is correct, and in the nature of these things there is a fairly generous amount of give and take among the people who are developing the plan, a change of ideas. That is correct, isn't it?

A. If you are referring to the discussions that I and (R 2, 253) my partners had with the Bond and Share group, I don't think there was any question of give and take. It was their decision to make. We give them the benefit of our judgment on different phases of it, but they and their counsel were the ones who always had to make a final decision.

Q. But as you say, you don't just pull a plan out of a hat and say here it is.

A. No, sir.

Q. Nor do you present a plan to your client and say here it is. That doesn't end it, does it?

A. It never has. In fact, we made a number of suggestions during the course of the proceedings some of which were referred to here, varying types of plans that we all discarded for one reason or another later on.

Q. Of course Bond and Share found something objectionable to the program and set forth its reasons for objecting to it, I suppose.

A. I don't think it was ever a question of their objecting to it. It was a question of the practicability of carry-

ing it through and the fairness of the plan to the different classes of security holders, the possibility of getting approval by the commission as a matter of judgment.

Q. What is right, and practicability would embrace, would it not, Bond and Share's own ideas of the type of enterprise it desired to be?

(R-2, 254) A. That may be, but I don't recall any discussions with me until we got up to framing Plan 3 that had any bearing on that subject. It was purely a question as between United Gas and ALMNO of what had the greatest appeal to the security holder and what had the best outlook for the long range.

As a matter of fact, I think the first suggestion to use some of the Electric properties in the exchange with United Gas came from security holders who wanted participation in the Electric properties.

Q. Of course you say you thought United Gas was more valuable from the long run viewpoint, and that was the reason you preferred United Gas.

A. I came to the conclusion during the course of the negotiations that it would be a mistake to use United Gas as the sole vehicle of taking out preferreds, if a plan could be developed for using part gas and part electric.

Q. But of course if Bond and Share were under commitment to get rid of any United Gas stock it got or anything else it got out of the reorganization, it wouldn't make much difference to Bond and Share, would it?

A. It might not make a difference to Bond and Share as an entity, but it might make a great difference to Bond and Share stockholders to whom the security might be distributed.

Q. It is correct, isn't it, that during the period of negotiations of the Electric plan you were aware of the (R-2, 255) possibility that Bond and Share might seek to retain United Gas. Is that correct?

A. I don't think that question affected my thinking during pendency of the original Bond and Share plans

for Electric or the Electric plans. I think there it was entirely a question of what counters would be more acceptable to some, at least to the preferred stockholders, and the growth possibilities of United Gas as against Electric. But as I say, up through the 1946 plan we left that choice up to the preferred stockholder under the alternative ratios that were provided in that plan.

Q. But in the negotiations in 1948 you were aware of the fact, that Bond and Share might seek to retain the stock of United Gas that it might get out of the reorganization?

A. I think I heard the lawyers say that there might be some possibility or probability of there being able to retain United Gas against ALMNO, but I wasn't particularly interested in that phase of the situation at that time. It was a legal question that was up to them.

Q. Isn't it more than a legal question? Isn't it a question of what form the allocation might take?

A. I crossed that bridge of the form of the allocation long before. I thought it was important to try to use the Electric properties if they could be used for the reasons I have indicated.

(R-2, 256) Q. Of course, if your client had other reasons for wanting to get one stock rather than another, you would be interested in trying to effectuate the wishes of your client assuming fairness at all times. That is correct, is it not?

A. Why, certainly.

Q. If your client indicated to you that he would rather have United Gas and fairness could be achieved through a distribution of Middle South to the preferred stockholders, that would be a reason for your desiring your submitting a plan whereby your client would obtain United Gas, still assuming fairness?

A. You couldn't take out all the preferred with the Electric properties on the basis of the valuations as we saw them at the time. My recollection is that in the Bond

and Share plan we gave the preferred stockholders their choice of the alternative allocations, and we had to provide for a possible apportionment if more of the preferred stockholders elected to receive the Electric properties than there was Electric stock available for them on the indicated basis of exchange.

Q. But while there wouldn't be enough of the Middle South stock to go around, your answer to my question would be yes, to the extent the Middle South stock might go around. Is that correct?

A. I favored the inclusion of the Middle South stock, (R-2, 257) which we then called ALMNO, in the package. The plan that Electric had filed was based entirely on the use of United Gas. I thought that we ought to try to develop the ALMNO stock as a part of the package that the preferred stockholders would get. I am sure nobody will contradict me that for long prior to the period when Bond and Share filed its so-called voluntary plan I had been advocating an enforced over-all take-out plan dealing with both classes of preferred at the same time in an order of enforcement, but it didn't seem practical to get agreement at that time on that type of plan and Bond and Share filed the other type of plan.

Q. Mr. Hopkinson, were you responsible for the formulation of the preference common plan on United Gas?

A. There were three different attempts for a preference common plan on United Gas. The first one we suggested, and as a result of conferences and studies with Bond and Share officers and attorneys. They decided not to use that type of approach but to file the kind of plan which was filed in May of 1946. Then at a subsequent date a substantial stockholder of Bond and Share reopened the question of a preference stock being created on United Gas and using that in part to serve as the vehicle for exchange. That was abandoned and never filed. Then right down toward the end of the negotiations in the 1948 plan, Duff & Phelps came up with somewhat the same



type of approach and again that was abandoned. It was explored (R-2, 258) on three different occasions, however.

You could never have created a preference in United Gas in sufficient amount to take out all the E. L. preferred that had that preference stock of quality necessary to give it sound investment value. The coverages weren't there.

Q. That would have resulted, would it not, if some of these plans had gone through, in preference common and Middle South going in a package to the preferred stockholders, leaving the new United Gas common to be distributed to the common stockholders?

A. That was the general approach that was made on these three separate occasions.

Q. And such an approach would have of course given Bond and Share a greater degree of the voting stock, of the common stock, of United Gas. Isn't that correct?

A. I don't know that it was ever considered from the question of voting power. I think it was entirely one from the standpoint of giving as much market value as you could give to the preferred stockholders and retaining as much earnings as you could for the common stock.

Q. You indicated earlier in answer to a question of mine that your concern was not what Bond and Share might be until after the Electric plan. I wonder if you would modify that statement after refreshing your recollection from a statement I will read you, which is at page 43 of your affidavit. (R-2, 259) I quote:

"On March 8, 1948, Hopkinson attended a meeting at the E.B.&S. Offices in New York, at 2 p.m., with Messrs. Calder, Walker, Lampe and Colt, where the Stathas Plan above referred to, dated 2-28, was particularly discussed. Messrs. Colt and Lampe had prepared various calculations showing modifications of the Stathas program, reducing the amount of preference common to be put on United Gas, so as to give to the \$7 preferred 6 to 6½ shares instead

of 8.2 shares as in the Stathas memorandum. The fundamental disadvantage of this approach, using a large percentage of United Gas to take out the preferreds, was discussed in the light of the impossibility of E.B.&S. retaining ALMNO, of which, under the Stathas Plan, they would receive a much larger percentage and a smaller percentage of United Gas, which they might well be permitted to retain."

A. I think that is entirely consistent with what I said when you bring it down to 1948, that at that time the lawyers had spoken of this possibility or the greater possibility of retaining United Gas than ALMNO, which as an Electric operating Utility would unquestionably have to be disposed of.

Q. But the conference that you referred to at page 43 was not a conference of lawyers, was it? It was a conference of Messrs. Calder, Walker, Lampe, Colt and yourself.

(R-2, 260) A. I have no doubt that some of that Bond and Share group expressed the point of view of the lawyers, and it was not any point of view that I pulled out of a hat.

Q. But the question of the possibility of retention of United Gas and the evaluation or formulation of the program was certainly considered in the light of what securities Bond and Share might get. Isn't that correct?

A. Oh, at that time, unquestionably.

Q. Oh. So at least as far as the 1948 plan is concerned, we are clear, are we not, that Bond and Share was concerned and you as its adviser were concerned with a plan for the reorganization of Electric consistent with a policy, a future policy, for Bond and Share, and they were concerned about a plan taking a form which would help implement that policy.

A. At that time unquestionably Bond and Share had apparently developed an additional reason for the de-

sirability of using the Electric properties, in part at least, as the vehicle for exchange from the reason which originally had influenced me in the 1946 work, where I am very sure I had at that time heard no discussion whatever of any question of retainability of one stock as against the other.

Q. So at least at that time, that is, in 1948, the motives of Bond and Share or the reasons for Bond and Share's desiring one program in preference to another, assuming both programs to be fair, might be quite different from those of (R-2, 261) the public security holders and those of the Electric Power and Light Corporation, is that correct?

A. I don't know that that is necessarily so because it isn't any different from the point of view I had back in 1946. I thought it was a mistake from the standpoint of the common stockholders of Electric to give up all of United Gas and keep all of ALMNO, that they ought to endeavor to work out a plan by which they would use the Electric properties in part at least for the take-out.

Q. I used the word "might" in my question, and you transferred it to "necessarily." Again, that might be so, might it not?

A. I don't think I can explore the motives of Bond and Share other than I have stated them in my answers today and in the memorandum which I have filed here.

Q. But the question of what Bond and Share might get in relation to its future program was a factor none the less in your thinking and that of the officials of Bond and Share. That is correct, isn't it?

A. I think the officials of Bond and Share by that time had come around to my thinking for perhaps an additional reason.

Q. Mr. Hopkinson, I am afraid you are not being very cooperative with me.

A. I am being as cooperative as I can, Mr. Fink, but (R-2, 262) I don't know that I can say anything more

than that at the time of the formulation of the 1948 plan Bond and Share officers had apparently discussed with their lawyers the possible difference in retainability of one property as against the other.

Q. When you said that Bond and Share in 1948 had merely come around to your way of thinking, which you had expressed in 1946, you don't relate that to your having then formulated a program for the future policy of Bond and Share, do you? You don't mean it in that sense.

A. I don't think my thinking on the 1946 plans had anything to do with the ultimate work-out of Bond and Share's situation. It was based entirely on what I regarded as a desirable financial approach from the standpoint of the junior security holders of Electric Power and Light.

Q. But that they had come around in 1948 to the views you had in 1946 for reasons other than the views expressed in 1946. That is what you mean.

A. I am not sure that they disagreed with the views I expressed in 1946, but I do think they did not feel the time was ripe to file that type of plan at that time. I am quite sure they had some conversations with Mr. Dixon and possibly Mr. James with regard to an enforced plan back at that stage of the game, but I think they were quite opposed to doing it at that time, although perhaps their minds were open (R-2, 263) about it being a development that might come out of the hearings. I had discussed the matter with some of the members of the staff down here and the problems I saw in what I regarded as "come and get it" or piecemeal plans, and I am sure those conversations were reported back to the officers of both companies.

Q. Getting back to the line of questioning I was pursuing somewhat earlier, when you were called upon to discuss problems of Electric Power and Light Corporation, did you ask Bond and Share in what context they wished to discuss the question, whether it was in relation to a particular plan or whether it was general?

A. I don't recall any question of that kind.

Q. Or were all your discussions with Bond and Share always keyed to a proceeding pending at that time and a particular plan?

A. Oh, no. The discussions started some months before the first plan was filed. The so-called open-end plan which was filed by Electric Power and Light in November. One of the reasons for filing that as an open-end plan as we worked out in one other case prior to that time, was to permit the hearings to get started and make the record on the fundamental facts and earning power of the properties and then permit the details of how the exchange offer was to be made to be filled in after that basic material had been made a matter of record.

Q. But my point is, weren't you really available at all (R-2, 264) times to discuss and consult with Bond and Share not just in respect to a particular plan or proceeding, but with respect to their over-all Holding Company Act problems? Isn't that the kind of relationship that has persisted between you and Bond and Share since 1945?

A. I don't think there was any discussion of policy with me as far as Bond and Share's program back in 1945 other than represented by the very general plan they filed at that time for the elimination of their own preferreds and the ultimate disposition of such items that they might receive out of these other reorganizations as were not retainable. I certainly tried to arrive at no independent conclusion or pass on the question of law, what might or might not be retainable. There was very intensive work for almost a year and half after May 1945 on the type of plan and on the hearings to the different plans which had been filed prior to those hearings.

Q. Again I have some difficulty in following you, Mr. Hopkinson. Isn't it correct that your activities have not been isolated, that you have not been assigned to a par-

ticular transaction or plan or proceeding, but rather you have been in the nature of a general consultant to Bond and Share in connection with its holding company problems?

A. I don't think that is quite a fair statement. I think they formulated their own questions of policy. I certainly assisted them in working out the details and drafting (R-2, 265) of the original plan they filed in 1945, I think they said the date was, dealing with their own problems, but I don't recall any discussion about their general compliance with Holding Company Acts other than consummating these holding company reorganizations, until we got down close to the time of filing Plan 3.

Q. Had there been any plan filed by Electric Bond and Share since you undertook to advise them, or since they retained you in 1945 has there been any major plan proceeding affecting Bond and Share concerning which you have not been consulted?

A. I wouldn't say that was not true with regard to any plan proceeding. I think that is perfectly true. But on the question of Bond and Share's own ultimate compliance, I don't think there was any discussion so far as I was concerned at all after the filing of the original plans 1, 2, 3, until the final Plan 3.

Q. But you did participate in the preparation of the original Plan 1, 2, and 3, did you not?

A. Yes.

Q. And that was very shortly after you were engaged by Bond and Share; that is correct, isn't it?

A. Yes, but as far as I was concerned there was no particular discussion of policy as to what Bond and Share was ultimately going to do to comply.

Q. When you were retained by Bond and Share in 1945 did they retain you specifically for Electric Power and Light?

(R 2, 266) A. My recollection would be that Mr. Calder said that they had a number of problems in connection



with the Holding Company Act as to which they might require financial assistance from time to time and that the immediate things that they wanted to take up with us were their own problem in getting rid of the preferred stocks and stopping the dividends running on them, and this electric situation which was coming up to a point where somebody was going to file a plan pretty shortly.

I don't think at that time there was any discussion of either Foreign Power or American Power and Light, but I have not looked up my records in either of those cases to see just when they were first discussed.

Q. So that when you first began to advise Bond and Share the first things with which you were concerned were simultaneously or approximately simultaneously the possibility of doing something about the Bond and Share preferred stocks, which was immediately filed, which was filed very shortly after you commenced this relationship, and the possibility of a plan for Electric concerning which discussions were had for some six months before a plan was filed. That is correct, isn't it?

A. I have a memorandum which I dictated on May 9, which was shortly after my first meeting with Mr. Calder and Mr. Walker on May 3. That memorandum had unquestionably (R-2, 267) been preceded by a telephone conversation with Mr. Walker, because I acknowledged receipt of some papers he had sent me showing various approaches to an allocation between the EP&L stock. That means between the preferred and common stocks of Electric Power and Light. I also have this note, that he referred also to the EB&S over-all plan, and they might like to discuss certain phases of that with us shortly. That was a memorandum dictated at the time and I think it is substantially what my recollection was today, that the American Power and Light and American Foreign came in later.

MR. JACKSON:—What is the date of that?

THE WITNESS:—May 9.

MR. JACKSON:—What year?

THE WITNESS:—1945.

By MR. FINK:

Q. Of course it would have been physically impossible for both Bond and Share and for you to have undertaken all of the problems of all of the sub-holding companies simultaneously.

A. It didn't so happen.

Q. It would have been would it not?

A. We think we have got a pretty good organization, with nine partners, and we get out a good deal of work when we have to, even though it involves a number of different things at the same time.

Q. It is correct, is it not, that something had to be (R-2, 268) done about these two things, the retirement of the preferred stocks and the Electric Power and Light situation by reason of the reorganization at that time of the United Gas Corporation.

A. The United Gas reorganization had been completed some time prior to that and the next move, as I understood was for Electric or Electric and Bond and Share, or and/or Bond and Share to file plans for cleaning up the Electric situation.

Q. That is right, and the fact was, was it not, that the reorganization of United Gas made possible the reorganization of Electric, and the acquisition of funds by Bond and Share in that reorganization made necessary the utilization of those funds and therefore a plan had to be filed for the preferred stocks.

A. You are talking about Bond and Share preferred stock?

Q. Yes.

A. It was very desirable to put that money to work in some useful way. As I recall it, under the SEC rules and regulations the only thing they could do with it would be to put it in Governments of some kind to get one or one and a half per cent interest on short-term govern-

ments instead of retiring five or six per cent preferreds didn't make very good financial sense. So we finally worked out a plan by which this partial payment was made on account of the Bond and Share (R-2, 269) preferreds, pending the time when Bond and Share could raise the necessary funds to make a complete retirement of the preferred stocks.

Q. Were you responsible for the formulation of the idea that the November 5, 1945 plan be filed with ratios of allocation blank.

A. I certainly urged that as a method of getting ahead and felt that it might ultimately lead to more speed than trying to fit out the allocations in advance of filing a plan or having opposing plans filed initially. Certainly I made that suggestion to Mr. Calder.

Q. Had you at the time of the filing of the November 5, 1945, plan developed your notion as to what might constitute a fair and equitable exchange for the preferred stocks?

A. No. We batted it back and forth on various assumptions of earnings, but I think we all thought we had to keep our minds open and see what the testimony would look like after it had been put in by the witnesses for the different companies and you got your revised estimates of future earnings.

Q. You have heard the testimony of Mr. Jirgal in this proceeding and I believe you are familiar with his testimony in the Electric Power and Light main proceedings.

A. I was very familiar with it at the time. I have not re-read it for the purpose of this examination.

Q. Do you recall Mr. Jirgal's testifying that in his (R-2, 270) view, testifying then and reiterating it yesterday, that in his view the allocations finally arrived at of 6½ shares of United and 4½ shares of Middle South for the \$7 Preferred Stock were the same as those which he had thought fair in 1946 when he supported 11 shares of United for the \$7 Preferred Stock?

A. Yes, I heard him say that, and obviously  $6\frac{1}{2}$  and  $4\frac{1}{2}$  add up to 11, but there had been quite a substantial change in the market price of both natural gas and electric utilities between the 1946 date and the 1948 date. So I think you have to take those considerations into account as well as the absolute number of shares.

Q. Wasn't the testimony on the two dates predicated upon a value of approximately \$18 a share?

A. I don't recall what values Mr. Jirgal put on them at the different dates, but I know that in the indexes that I constructed from time to time of these different companies, the yield on common stocks of both natural gas companies and electric companies had substantially increased at the later dates. You may recall the break in the market started in the summer of 1946.

Q. I am merely interested in whether you agree with Mr. Jirgal's statement that Middle South and United could be treated interchangeably so that  $6\frac{1}{2}$  and  $4\frac{1}{2}$  can be treated as 11 shares of United.

(R-2, 271) A. I don't agree with his statement that he intended to give the impression and I doubt if he did that the 11 shares of United had the same market value in 1948 as they did in 1946.

Q. That is not my question.

A. In that sense I don't think that is so. I have not made any new computation of the  $6\frac{1}{2}$  and  $4\frac{1}{2}$  at the time of the 1948 plan filing.

Q. Do I recall your testimony correctly that you have had no part at all in advising as to what should be done about the settlement of claims?

A. None whatever.

Q. And you have not been concerned with it at all?

A. Not at all, sir.

Q. Does that mean that you did not consider the claims settlement as an integral part of the over-all allocations?

A. No, the claims settlement. I never had any judg-

which would be described as specific. There had been a lot of calculations of present worth and possible plans of one stock reorganization, which was the original material that they discussed with me.

Q. Had they come to any conclusions as to what their common stock interests would be under such a plan?

A. No, they had not because they did not have the up to date earnings estimates at that time.

Q. Did you work on an estimate?

A. We had certain assumptions as to earnings which were subsequently revised upwards when later studies were made by the operating companies.

Q. Did you use the estimates of earnings that you then had as the basis for determining the possible allocations?

A. No, because we were satisfied and the Bond and Share people were satisfied that those original estimates were too low and would be revised upwards and there was no use going into too much refinement until we got the later estimates. (R-2, 292) Although we did make certain studies and looked at it, we did not attempt to arrive at any final conclusions .

Q. We are referring now to your original employment in the early part of 1949.

A. 1945?

Q. 1945.

A. May 1945.

Q. May 1945 to be specific. Specifically they asked you to make these studies or to examine their studies?

A. To do both, to examine their studies and also to give them the benefit of our judgment as to the best type of plan to accomplish the reorganization of Electric Power and Light.

Q. Specifically were they anxious to get the best type of plan that would give their particular holdings the best possible allocation, or were they just acting as *amicus curiae* to get the best possible plan for everybody?

A. I think of course they were interested in getting the best possible plan for themselves that was also fair to the other affected security holders.

Q. Of course it had to be fair in order to pass the SEC.

A. Certainly.

Q. Weren't they primarily interested in getting all they could for their own security holders?

(R-2, 293) A. Obviously within the limits of fairness.

Q. Their security holdings were primarily common and option warrants.

A. Yes, and they had some second preferreds.

Q. About 18 per cent of second preferreds?

A. A larger percentage of second preferred than they had of the first preferred. I don't recall the number of shares of that, but it was relatively smaller.

Q. Did you understand they were more concerned with getting as much as possible for the common or for the second preferred or for both?

A. I think the treatment of the second preferred was sort of in between. The real contest was as between the first preferred and the common.

Q. They were concerned with getting as much for the common as they could.

A. Subject to the limitation of fairness, as I have already said, of course.

Q. And the company encompasses that, doesn't it?

A. It might not if it stood alone, but I would like to have it coupled with it.

Q. Would you in connection with the answer you gave me a few moments ago, Mr. Hopkinson, look at the first paragraph on page 2 of your affidavit and tell me whether your (R-2, 294) recollection wasn't at fault as to whether or not you did arrive at a definite conclusion as to allocations under one stock plan. The first paragraph, page 2.

A. No. There were four different methods referred to there. We refer to a range of allocations running from 81



ment about whatever. I never made any study of them, and I never gave any weight to them as affecting the allocations.

Q. You would have reached your conclusions with respect to the allocations whether or not there was any claims settlement.

A. Yes. I always understood, and I think correctly, that the claims settlement would be handled in cash entirely apart from the question of allocations.

Q. Can you tell us what the first date was that you did (R-2, 272) any work for Bond and Share in connection with American Power and Light?

A. No, I cannot. I did not review my files on either American or Foreign Power. I can only say it was some time later than May 1945. We did not start at that time.

Q. Of course it is correct, isn't it, that any studies made in connection with market trends, in connection with utility valuations, in connection with earnings of Electric properties, and price-earnings ratios, yields, and in connection with proper discount rates, in a reorganization of one of the sub-holding companies of the Bond and Share system is of value in connection with studies for another sub-holding company in the Bond and Share system?

A. I would think a very indirect value, because where you are making up a list of companies whose yields or times-earnings you are going to compare you have to try to make up a list of as nearly comparable companies as you can. The value of your judgment, the extent to which you refer to the index, is based upon the components in the index. That was one of the big differences I think that both Mr. Jirgal and I had with the Duff & Phelps indexes that they used in connection with the E. L. 1946 and 1947 hearings. As far as the discounts are concerned, if you are going into the question of trying to determine the present worth of the preferred claims, I have been one of those who has felt that the discount (R-2, 273) theory of arriving at it was of very little value and in-

volved just as many assumptions as trying to reach an overall impression of fairness based on earnings and proper length of time of the pay-out. I have reviewed a lot of work in connection with arriving at present worth of the discounts, and I suppose it has some value, but I have never attempted personally to use it myself.

Q. When you testified in 1946 your testimony was prepared as in the nature of rebuttal of the testimony adduced on behalf of the operating officials of Electric Power and Light. Is that correct?

A. Not entirely correct. It had two phases. One, an appraisal of the value of the earning power of the property based on the estimates of future earnings and the record of past earnings and judgment as to growth factor based on the economic outlook, and the other was this one of the territory in which these companies operated and what was taking place there with regard to the future.

Q. For the factual data you relied upon the historical earnings and things of that nature that had been put into the record by the operating officials, is that correct?

A. Subject to certain judgment factors as to the growth trends of the past which were reflected in the studies and charts that Ebaseco made up, which didn't seem to me were fully taken account in the future earnings estimates made by the (R-2, 274) company officers, although I was not in a position to dispute their earnings in anything other than a broad trend that had been exhibited by past growth and my feeling as to the future possibilities of industrial and residential expansion in the service areas.

Q. Mr. Hopkinson, I haven't had the opportunity to read through your affidavit in entirety. Can you tell me whether it sets forth the number of hours that have been devoted to this matter by you and your associates?

A. Not as such. I think it indicates that from the start of our work in early May 1945 until the conclusion

of the hearings in September 1946, there was very intensive work almost constantly through that period, with possibly the exception of the month of July, perhaps July of both years, no, not until July 1946. That was a busy time. It would appear from this some work was done from time to time between February 1947 and November 1947, but nothing like on the intensive basis that it had been done in the earlier period. Then there was pretty active work beginning in January 1948 and continuing up to the filing of the final compromise plan in May 1948. So I would say there were two years in there approximately where there had been a very substantial amount of time expended, and an intermediate period of about a year and a half where there was only occasional work.

Q. You don't have any breakdown of the actual time, the (R-2, 275) number of days?

A. We never kept any time records. It could only be reconstructed from material such as this by approximating the length of time it may have taken you to work on different types of documents. I have liberally sprinkled through there the number of special delivery packages I got at home over Saturdays and Sundays which during the period of intensive activity was a pretty regular week-end occupation.

Q. I note that you reviewed the brief which was filed in 1946. Was that a joint brief of Electric Power and Light and Electric Bond and Share? That is referred to at page 38 of your affidavit.

A. My recollection is that that was a joint brief, although I would not dispute anybody if they said it was not. The portions of it which I was interested in reviewing were of course the part dealing with the financial testimony.

Q. Can you tell me whether you have reviewed the briefs submitted by counsel for Bond and Share in other proceedings before this commission, specifically the briefs in Plan 2-B?

A. I would think so, but as I say I have not reviewed my notes in connection with that case. I would think I had.

Q. It probably would be very likely in so far as it contained that analysis, since you had testified in the case, that you would see that the brief accurately summarized your testimony.

(R-2, 276) A. I think it is very likely. Mr. Jones sent me copies of the various proofs of brief as they were developed.

Q. In 1947, Mr. Hopkinson, did you undertake to advise Bond and Share concerning the feasibility of the then pending plan, the joint plan, or whether steps should be taken looking toward the submission of a new plan?

A. There were considerations of new plans undertaken I think beginning in April of 1947. I think by that time the thing had been in the hands of the Commission for six months or more, and no decision had come out. I guess everybody felt that the change in conditions perhaps needed a fresh start.

Q. You consulted during that year with Bond and Share concerning the form that some new plan might take. Is that correct?

A. Yes, that is correct, and it appears on my memorandum beginning on Page 39.

Q. During that period of time a plan was proposed by Bond and Share which would take out the preferred stock entirely with Middle South?

A. I don't think so.

Q. Was there a plan submitted or discussed? I don't mean filed, but discussed.

A. Not to take out the preferred entirely with Middle South, because Middle South was never valued at a figure which (R-2, 277) would have approximated the equitable equivalent of the claim of the preferred.

Q. Was there a plan which called for using Middle South as far as possible to take out preferreds and then

using only as much more of United Gas as was necessary to make up the difference?

A. I don't think there was ever a plan that used all of ALMNO and only enough of United Gas to make up the difference. I always felt particularly if it was going to be an enforced plan, to have it succeed, you would probably have to use a portion of each.

Q. Do you recall what date in 1947 you became convinced that the 1946 joint plan could never be carried out and that a new plan should be filed or further steps should be taken?

A. No. I don't recall that any of us ever became convinced it could not be carried out, but it seemed to be bogged down and I think everybody thought there should be a new attempt made to see if we could not get together and get the thing cleaned up rather than have indefinite litigation. My first record of an approach to a new plan was the one that Mr. Jackson initiated in February 1947.

Q. You say you didn't know whether the plan would ever be carried out, that it was bogged down. Wasn't it bogged down because of the fact that the market at no time in that (R-2, 278) period made the plan feasible?

A. I don't know how far you are willing to go in admitting that the SEC ties the feasibility of a plan to the market. I had rather understood the theory of most of the decisions as being the earning power. Yet, you can't overlook the fact of the market to some extent.

Q. Wasn't that a voluntary plan with a cash alternative?

A. Not the Electric Power and Light plan. The Bond and Share plan was.

Q. I am talking about the joint plan of 1946.

A. Yes. It was conditioned on 60 or 75 per cent. One of them was one, and one other. I don't recall which.

Q. Didn't that have a cash take-out of \$192 for the \$7 preferred?

A. Yes, provided the necessary percentage of preferred stockholders had agreed to it.

Q. And if there were wide disparity in the market price of the stocks, they were to receive the \$192. Do you think a plan could be carried out which offered them, say, securities worth \$150 as against cash of \$192, with 60 per cent minimum take-down?

A. No, because you wouldn't get 60 or 65 per cent acceptance under that.

Q. Then do you agree with me that the plan did not appear feasible because of market conditions and do you want (R-2, 279) to withdraw your statement concerning the Commission's looking to markets rather than earning power?

A. I was speaking generally and I am afraid I didn't have in mind in relation to your question the particular problem that you have now posed with relation to that particular plan.

Q. So your statement did not have anything to do with the 1946 joint plan.

A. Of course, if the Commission had come out and said the plan isn't feasible, you have to make a fresh start, then we would have started sooner.

Q. Do you recall that the Commission had been requested to hold the plan and not take any action in the hope that the market might finally firm up?

A. Now that you speak of that, I do believe that I heard something about that at the time, although I had no personal participation in it.

Q. Were you aware of the fact that finally a letter was written to the Commission requesting that in effect it be withdrawn by reason of the fact that the plan no longer appeared to be feasible?

A. I don't recall that letter, and I don't think I referred to it in my memorandum.

Q. I asked you a few minutes ago whether you were familiar with a plan proposed by Bond and Share for the



(R-2, 280) take-out preferred stocks with the stock of the new company, that is the new holding company, and I believe your answer was that you did know of such a proposal. Is that correct?

A. Not as the sole medium of exchange because there was never sufficient market value of the new holding company stock to accomplish the purpose, as I recall it.

Q. I am reading from paragraph 227 of the affidavit of Daniel James, which is in the docket in this proceeding in which he states:

“We also examined the Bond and Share draft plan for the distribution of common stock of the new company to the preferred stockholders in retirement of those issues . . .”

And the date of that period between argument on compromise plan and negotiations on the 1948 plan, which puts it between September 21, 1946, and March 1948.

A. I have no recollection of a plan that I would describe in that language.

Q. Then you think Mr. James is in error in his statement or are you not aware of it.

A. It might be either, but as I say, the reason I think that there is some misunderstanding either in the language or the way it is stated there is that as far as I know there was never any thought by anybody that there was (R-2, 281) enough of the new Electric stock in market value to completely take out the preferreds. There was a discussion at one time of making a partial distribution of United Gas stock in reduction of the liability on the preferreds, but I don't recall the opposite of the Electric stock for that purpose.

Q. The question of the dividend preference stock of United Gas Corporation was never discussed with officials of United Gas Corporation, was it, as far as you know?

A. I don't recall that it was discussed by me, but my impression would be that Mr. Calder had certainly raised

the question with them. How far he went in that, though, I don't know.

MR. BOONE:—Have you had the opportunity of seeing Mr. James' affidavit?

THE WITNESS:—No I have not.

MR. FINK:—Does he want to see it?

MR. BOONE:—No, I don't think so because I remember what Mr. James is referring to there.

I doubt whether Mr. Hopkinson ever saw that.

By MR. FINK:

Q. Mr. Hopkinson, when you commenced rendering services to Bond and Share, you became, did you not, if you were not already, familiar with Commission decisions relating to Electric Bond and Share and its subsidiaries?

A. I guess I was familiar with some of them at least in (R-2, 282) a general way, but I never had any occasion to make any detailed study of them. I don't know that I would want to claim familiarity with all of them in connection with my work on different phases of this thing. Of course, I have either been advised or brought myself up to date with Commission releases.

Q. I don't know whether you would recall it now or not, but you would consider it important, would you not, to familiarize yourself with the major decisions affecting Electric Bond and Share and the Holding Company Act Section 11 decisions in commencing a relationship of this kind?

A. I would think that would be more a matter of the lawyers to advise them as to the effect of my approach to different types of plans. I would be interested in them probably as far as I was concerned more from the standpoint of analysis of the corporate structures and earnings of the different companies that might be involved in the particular situation?

Q. In May 1945, when you commenced your services as adviser to Bond and Share, were you familiar with the Holding Company Act release No. 3750 which is the

findings and opinion of the Commission with respect to the dissolution of Electric Power and Light and American Power and Light?

A. I very much doubt it.

Q. You didn't familiarize yourself with those as a (R-2, 283) matter of routine?

A. I have no recollection of it other than the general statement that was probably made to help by the Bond and Share officers as to what they had to do and proposed to do.

Q. Were you familiar with the fact that at the time you undertook your relationship with Bond and Share, proceedings were pending in the Supreme Court of the United States with respect to that very dissolution order?

A. I know there were proceedings pending in the Supreme Court with relation to Electric Power and Light because at one time Electric Power and Light were unwilling to make certain moves or were reluctant, perhaps I ought to say, to make certain moves until that decision had been handed down. I only knew of it to that extent.

Q. Of course, the question of what the Supreme Court might do in the case might seriously affect what Electric Power and Light might do or might have to do in compliance with the Holding Company Act. That is correct, is it not?

A. That is perfectly true, but as to that kind of questions I would expect to be advised by the officers of the company or by their attorneys.

Q. I am not sure whether you said you didn't familiarize yourself with 3730 over the years.

A. I have no recollection of that particular decision, although I have no doubt that I was told the substance of (R-2, 284) it by the Electric Bond and Share people or their counsel.

Q. You haven't regarded it as important in your work to keep abreast yourself of Commission releases affecting Electric Power and Light, American Power and Light,

Electric Bond and Share, American and Foreign Power, United Gas, by reason of the impact of those Commission decisions upon the corporate policy of Bond and Share and its problems under the Holding Company Act?

A. As I said before, I think I have gotten all the information I could about factual situations from the Commission findings regarding capital structures of companies and their earnings, but as far as the legal impact of those decisions on the companies affected, I would certainly rely on counsel to advise me.

Q. From your reading of Commission releases you found it true that an analytical mind is sometimes of greater value than legal training.

A. I think they are used for different purposes.

Q. I mean that there is a very considerable amount of financial analysis in each of these releases affecting these holding companies?

A. And that is what I tried to tell you that I was interested in in the releases, not in the legal effect on what the companies had to do or need not do.

Q. You have studied, have you not, over the years the (R-2, 285) Holding Company Act?

A. I have certainly read parts of it on numerous occasions.

Q. And you are a lawyer, Mr. Hopkinson?

A. Yes, but I have been very careful not to practice since I retired from active practice in 1926.

Q. You recall that I questioned Mr. Scaff earlier in the day about separation of certain activities in relation to different matters, and he had some difficulty about that separation by reason of their sometimes interrelated nature. If my summary is wrong, tell me.

A. Yes, I heard his testimony, and you were asking him to do something in connection with the data and charts and economic studies they made in separating them between different plans, which I think it is impossible to do because a great deal of that material in its original

form was prepared before there was any plan. Then it was brought up to date and revised and supplemented and amplified from time to time. All the studies that they did on the economic trends and growth in the Mid-south area as we call it, was equally applicable to any type of plan. The data and charts that they made showing historical earnings and the part of the income dollar that went for different purposes, and the projection of that into the future based on those past trends also would be equally applicable to any plan. So a great deal of their (R-2, 286) material was basic, no matter what plan you were working with at any particular time, and what you had to do was to bring it down to date. Of course, on the work they did, which our organization also did, in setting up indexes of comparable electric companies and natural gas companies, was something which you had again to revise and possibly alter the components of from time to time as they might be affected by individual conditions. So I think it is extremely difficult to break down the Ebasco material for the most part as between plans.

Q. And you would have the same difficulty with your own material, would you not?

A. I think to a lesser degree because our material had to do in some particulars with specific plans much more than the basic material which Ebasco prepared which had to do with earnings and corporate set-ups of these companies and economic conditions, which were the same no matter what plan you were considering.

Q. Aside from the mechanics, the individual mechanics and individual provisions of a particular plan, much of the work of which is done by lawyers, the analytical factors and the financial predicates remain the same, do they not?

A. Of course, in testing out the different plans you have to apply the particular corporate set-up contemplated by the particular plans and the particular allocations of the securities in question. To that extent it is perfectly

simple (R-2, 287) to relate that type of work to the particular plan on which you are working at the time.

Q. What I am saying is that you would have the same difficulty, would you not, in allocating to a particular plan or stage in this proceeding certain financial research that you had done or certain work you had done because of the fact that it might carry over up through another plan. That is correct, is it not?

A. It is correct to this extent: Where you had an index of natural gas company stocks set up for comparison with United, or an index of Electric operating company stocks set up in comparison with the new electric company, if an interval of time went by you would review that index to see if there had been any unusual factors discontinuing the use of any of the companies in the component. Then you would bring it down to date by getting the latest reported earnings figures and the latest balance sheet data and the latest market prices. Therefore, you would get a revision, maybe, of your typical yield for that type of company between one date and another.

Q. Of course, to the extent that Ebasco was unable to separate work which was done in connection with financial studies requested by you, or your firm, to the extent they would have any in making any segregation, would not your firm and you have the same difficulty?

(R-2, 288) A. No, because we weren't duplicating the Ebasco work on the basic studies with relation to these different companies. I would say that most of the financial studies that Drexel & Company did had to do with setting up yardsticks for comparison with either United Gas or the new electric company, and the other tasks with relation to how the particular plan you then had under consideration worked out. There is no difficulty in knowing which plan you are using for that purpose. Where I think Mr. Scaff was troubled was on their basic studies which were made and which carried right through, subject to being brought up to date from time to time.



Q. Do you believe that you could segregate in your work that amount of your work or that portion of your work the major purpose of which was to aid Electric Bond and Share in the solution of its problems under the Holding Company Act and, on the other hand, that amount of work the major purpose of which was to effectuate a plan of reorganization for Electric Power and Light?

A. I think all the work covered in this affidavit and my testimony here was primarily for the purpose of accomplishing the Electric Power and Light reorganization, and not in connection with Bond and Share's ultimate work-out of its own problems.

Q. We could probably agree on that statement if to that you were to add, within the framework of the corporate policy (R-2, 289) of Bond and Share in working out its own problems. Would you subscribe to that?

A. I am not quite sure what I think you mean by your addition to it, so I do not know whether I do or not.

Q. One further question: Is it correct that the services of Ebasco in this proceeding, if you know, were primarily in the nature of being a research staff for Drexel & Co.?

A. And also for the officers of Bond and Share who were working on this problem.

Q. And of course Drexel & Co., Bond and Share and Ebasco were all working very closely together on these problems at all times.

A. Yes. There were times of course when we had breaks, fortunately.

MR. FINK:—I have no further questions.

HEARING EXAMINER:—Are there any further questions?

MR. JACKSON:—I would like to ask some questions, please.

(Brief recess.)

MR. FINK:—Mr. Hopkinson, I have one further question.

By MR. FINK:

Q. Does your petition and affidavit set forth the fact

of purchases and sales of Electric Bond and Share system securities by Drexel & Co. and members of the firm and members of their families?

A. It does not refer to that at all. I would say as far (R-2, 290) as the firm of Drexel & Co. is concerned and as far as I am concerned, there were no purchases of any securities in the class to which you refer. I do not think there were any purchases by my partners or their families. If you desire to have that information, I can circulate a questionnaire among my partners and get any details for you that you desire.

Q. That will include associates or employees who have been working on this matter with you, if any?

A. Yes, I am quite sure the employees haven't bought any of these things, but I can check on it.

Q. Then you will prepare an affidavit setting forth those facts?

A. Yes.

MR. FINK:—May I reserve for that Bond and Share Exhibit F-11, I believe it is.

HEARING EXAMINER:—F-11, yes.

(Electric Bond and Share Exhibit No. F-11 reserved.)

MR. FINK:—That is all I have, Mr. Hopkinson.

By MR. JACKSON:

Q. Mr. Hopkinson, in the initial talks with Bond and Share did they disclose or did you learn their objectives in employing you, what they wanted you to do?

A. They wanted to have me help them in some of the financial matters in connection with different problems they (R-2, 291) had ahead of them.

In the initial conversation referring particularly to the retirement of their own preferreds and the EP&L reorganization.

Q. Specifically in connection with the EP&L reorganization did they disclose and did you learn their specific and particular objective?

A. I don't think they had any objective at that time

per cent to 64 and a half per cent for the first preferreds, on the second preferred from 7.7 per cent to 5.5 per cent, and the common from a high of 28.9 to a low of 13.2. We didn't attempt to refine it as to a specific allocation.

Q. But you did determine what you considered to be a fair range of allocation for the common from a low of 13.2 to a high of 28.9 based on earnings of approximately 12½ or 13 million dollars?

A. No, sir. Method 4 which is referred to at the top of page 2, if you will turn over to page 1, was a mechanical one based on market evaluation of the different classes of stock.

Q. Mechanical evaluation?

A. Well, it took the market prices of the stocks on April 16, which had been furnished to us, and then applied different theories of allocation to market prices, but that was not a valuation based on earnings at all. You see, the earnings estimates are referred to in methods 1, 2, and 3.

Q. Yes. Didn't method one attempt to make allocations on the earnings basis?

(R-2, 295) A. We didn't make any allocation on that.

Q. Did they?

A. I don't recall.

Q. Doesn't it say method No. 1 on page 1, study No. 3 and 4 on the basis of \$13.5 million static estimated consolidated net income?

A. It refers to those as studies that had been made, and I assume that there may have been some allocations on those, but they weren't made by us.

Q. No, no. I am saying now as between two of you, they furnished you, as I understand it, with four studies, and three of them were based on earnings. Method No. 1 was based, was it not, on the 1945 estimate of 11.537, increasing the 13.328 in 1949? Method No. 1 included study No. 3 and 4 on the basis of a static 13.5 million dollars consolidated net income. Isn't that right?

A. That is right.

Q. What were the allocations that you came up with or that they came up with?

A. I don't recall.

Q. Do you have those papers with you available?

A. I don't know whether I have or not.

No, I did not include it as a document number because it didn't seem to me to have any relevance.

Yes, I have those photostats in my file.

(R-2, 296) Q. Could you tell me what the allocations were on Method No. 1 for the common range?

A. Method No. 1 was 13.2 per cent for the common.

Q. And No. 2? Is there a range or a specific figure?

A. That is a specific one. It has been a long while since I have looked at this. Some of it was done—

Q. You have an advantage over me. I never saw them before.

A. Method No. 2 gave the common an allocation of 16.2 per cent. That is method 1, study No. 2. If you think these are relevant—

Q. I wouldn't ask you about them if I didn't think so.

A. Method No. 1, study No. 1, gave the common 13.2 per cent. Method No. 1, Study No. 2, 16.2 per cent. Method No. 3, 16.5 per cent. Method No. 1, Study No. 4, gave the common 20 per cent. Method 1, Study 5, 21.3 per cent. Method No. 1, Study No. 6, 25.7 per cent.

When we get to Method No. 2, it gave the common 18.6 per cent. That is Method No. 2, Study No. 1, 18.6 per cent. Method No. 2, Study No. 2, 18.9. Method No. 2, Study No. 3, 22.8. Method No. 2, Study 4, 20.7. Method No. 3, 17 per cent. Method No. 4, 19.17 per cent.

As I say, those were based on earlier estimates of earnings which we all thought too low and were discarded, as well as my disliking the one stock type of plan.

(R-2, 297) Q. Which is the one that gave you a high of 28.9 per cent which is referred to in the first paragraph on page 2?

A. That is on Method No. 3. I only gave you the allocation in response to your former question or capitalizing at  $7\frac{1}{2}$  per cent ratio. The 28.9 was a part of that same calculation, capitalizing a  $6\frac{1}{2}$  per cent ratio.

Q. These were given to you, and they had been prepared by Ebaseco previously? Is that correct?

A. I don't think there is anything on that which indicates whether they were prepared by someone in Bond and Share's organization or by Ebaseco.

Q. But they were given to you as coming from them?

A. Yes, sir.

Q. And you were asked to study them?

A. Yes, sir.

Q. You were to report your opinion on these studies?

A. Yes, sir.

Q. Did you do so?

A. Yes, sir.

Q. Did you make your report in writing?

A. No, sir.

Q. Verbally?

A. Yes, sir.

Q. Will you tell us what the substance of it was?

A. That I thought the one stock plan approach was an (R-2, 298) unsatisfactory one, difficult to administer. In the cases I had been familiar with, it had resulted in long litigation and I thought some kind of exchange plan was very much preferable and easier to do to meet the fair standards.

Q. Was it your opinion that those one-stock plans would produce a relatively unsatisfactory result for the common stock and therefore should be discarded?

A. On the basis of the earnings which were used as the basis for the calculations which had been presented there.

Q. You had studied the past and prospective earnings in connection with those studies, had you not?

A. Not at that time. That was one of the very first

things that we did, to look over these calculations as the basis of the earnings. We were told at that time that in the opinion of Bond and Share the earnings were entirely too low and what did we think of that approach.

Q. Let me understand, Mr. Hopkinson. When they gave you these studies, did they not also give you the compilation of past and estimates of future earnings for Power and Light and subsidiaries?

A. Those estimates were based on certain estimates of future earnings which had been made up to that time, but in their opinion, which was subsequently justified, the estimates at that time had to be revised upward substantially in the light of the actual experience that was taking place.

(R-2, 299) Q. Did they give you any written estimates of what they really thought the earnings would be?

A. Not at that time.

Q. Who made up this statement of prospective earnings that they furnished you with that they thought was insufficient?

A. I assume that the estimates had been made by Electric Power and Light.

Q. Their studies on the basis of these estimates that they considered insufficient?

A. The original studies?

Q. Yes. Did you make any subsequent studies or did you then make any studies based on what they thought were a proper estimate of the prospective earnings?

A. No, we abandoned the one stock type of plan as it approached the solution of Electric Power and Light's problem.

Q. You mean without going into making studies on the basis of what they really thought the prospective earnings would be, they gave you those, which they thought were worthless, and a statement of prospective earnings that they thought was worthless, and asked you to study those, and they didn't give you an estimate of prospective earnings that they had any faith in?



A. Not at that time, because the prospective earnings based on the experience that the companies were having during (R-2, 300) the year 1945 were not then available. They subsequently were produced and used at the later hearings and represented substantially larger amounts. We never made any attempt to apply those larger earnings to a one-stock type of plan.

Q. Mr. Hopkinson, isn't it a fact, as you show on page 1, that they furnished you with the 1945 estimate, that it was available? I refer to paragraph 2, line 6.

A. As I say, that had been made at an earlier date and was not being justified by the actual operating experience during 1945. Higher estimates of earnings were used in the subsequent hearings that were held on the plan.

Q. If I understand you correctly, they give you these studies based on the statement of past and prospective earnings. They had no faith in the prospective earnings. No attempt was made to give you a statement of prospective earnings in which they had any faith. They asked you to examine those estimates, and on the basis of those estimates and studies you advised them that the one-stock plan would produce a relatively unsatisfactory result for the Electric Power and Light common stock and that it should be abandoned?

A. That is not quite true. Of course I don't think it is fair to say that they had no faith in the earnings. They felt that the earnings were substantially on the low side. We were advised that further studies of earnings estimates were in progress and would be available at some later date.

(R-2, 301) My reaction to the one-stock plan was that it was not the fairest approach that could be made to working out the solution of taking out the preferred stocks.

Q. Your associate, Mr. York, and I am referring to page 3, and I want to cut this down as much as I can, reached the tentative conclusion that if an estimate of

reasonably expected future earnings between  $12\frac{1}{2}$  and  $13\frac{1}{2}$  million were to be used, a relatively unsatisfactory result for the Electric Power and Light common stock would be likely arrived at. Isn't that true?

A. That is true, and relates to the figures on page 7, in the middle of the page, where it says some of these studies were based on a static estimate of  $12\frac{1}{2}$  million dollars consolidated net income, and on the basis of  $13\frac{1}{2}$  million static estimated income, over the five years. We didn't believe the income was going to be static over the five years and it hasn't proved to be.

Q. Right. In consequence of that Mr. York held a meeting with Mr. Calder and Mr. Walker in New York on May 31 and expressed this view and suggested that consideration be given to an offering of United Gas corporation common stock to the Electric Power and Light preferred stockholders in lieu of a one-stock plan. That is correct, isn't it?

A. Yes.

Q. Thereafter did you get revised 1945 figures?  
(R-2, 302) A. Yes.

Q. Thereafter did you make up any statement of reasonably prospective earnings?

A. No, we never attempted to make any estimate of earnings ourselves.

Q. Did they make one and give it to you?

A. You see on page 3 that you are referring to there, that as a result of improvement in the operating results the estimate for the year 1945 for Electric was increased about a million dollars and the figure for 1949 was increased to about 16 million dollars, approximately \$2,750,000 over the earlier figure.

Q. Right, and that was shortly thereafter, that is, shortly after you made these studies based on these anachronistic earnings.

A. You say we made the studies on them. We studied the studies.

Q. That is what I mean. Did you then shortly thereafter attempt to make up any new study or ask them to make up any studies which you could study so that you could arrive at the consequences to the common stock of allocation under the one-stock plan?

A. No, we did not for the reasons I have indicated, we didn't think a one-stock plan would be the most satisfactory method of approach that it that could be devised.

(R-2, 303) Q. Then there isn't any doubt that it was your definite view that there should be an offering of United Gas Corporation stock to the Power and Light preferred stockholders in lieu of a one-stock plan?

A. At that time, yes.

Q. At that time. Did you ever change your view?

A. Yes, later on.

Q. How long after?

A. Before Bond and Share filed its plan in May 1946 we urged them to include at least as an alternate offer, stock of the proposed new Electric company.

Q. That was still a voluntary exchange offer for the preferreds for United Gas Corporation.

A. Conditioned on a certain percentage of the preferreds accepting it.

Q. Right.

Did you ever come to the conclusion that a one-stock plan would be better for Bond and Share's stock interest than an exchange offer?

A. No.

Q. So you adhered to that throughout these proceedings?

A. That a one-stock plan was not the best approach.

Q. And that Bond and Share's common stock interest would be best furthered by an offering of United Gas or Electric stock in exchange for the preferreds?

(R-2, 304) A. As of the summer of 1945 that was our recommendation, yes.

Q. Did you ever change that view?

A. Yes, we changed that view to express the view that we thought an enforced plan was the best approach for everybody and that there were more problems in connection with a voluntary plan even under the type of plan Bond and Share ultimately filed than there would be under a complete enforced plan.

Q. You came to that conclusion when?

A. I wouldn't like to call it as much as a conclusion, but we expressed that point of view to Bond and Share prior to their filing the exchange call type of plan that they did actually file in May of 1946, but they deemed it expedient to follow the voluntary approach to the plan at that time, combining, however, the alternative of using new electric company stock as well as United Gas.

Q. But you never deviated, I think I asked you this before but let me ask it again and end this particular discussion: You never deviated from your view that the interests of Bond and Share and its common stockholders would be furthered by effecting a retirement of the preferred by exchange of underlying securities of Electric?

A. Rather than a one-stock plan, that is correct.

(R-2, 305) Q. These percentages include the option warrants, the interest under the option warrants in common stock percentages?

A. I don't think so.

Q. If they don't, will you tell me what the interests of the option warrants were?

A. My recollection is that our thinking at that time was that the option warrants, if they wanted to participate in the reorganization, as they probably should, should exercise the warrants and put themselves in the position of common stockholders.

Q. They would nevertheless have had an interest in the equity, would they not, regardless of the method that was pursued?

A. Yes, but they would have put new dollars in at the same time.

Q. That is the point.

When you said that the interest of the common under method I would be 13.12 percent, did that include any possible interest of the option warrants, or did the option warrants have a percentage interest in the equity as shown by the studies independently?

A. No. these studies did not give effect to either the option warrants or to the additional stock that might be outstanding, common stock, if the option warrants were (R-2, 306) exercised.

Q. Necessarily, any interest from the option warrants in the equity was included in the 13.2 percent; is that not so?

A. If you treat that equity as increase by the cash which would go into the equity, I suppose that is so.

These studies have not been refined to the point of attempting to give effect to that.

Q. Mr. Hopkinson, maybe we can make this easier if I ask you under method No. 1 you find 13.2 for the common. Will you tell us the percentage that was found for the preferred in the one-stock plan under that proposal of preferreds?

That is the difference between 13.2 and one hundred?

A. The first one, study No. 1—wait a minute.

Q. Take any of them.

A. Well, the first preferred, under that method 1 study one, was eighty-one percent. The second preferred, 5.8 percent, and the common stock 13.2 percent.

Q. That totals one hundred?

A. That totals one hundred.

Q. So that necessarily any interest of the option warrants was included in the 13.2?

A. Yes. But if you were to adjust this for the exercise of the option warrants, you would have to increase the assets on which the allocations were based and the earning power that (R-2, 307) the option warrants would put in to participate as common stockholders.

As I say, there was no attempt made in any of these studies, as far as I can recall, to refine it to that point.

Q. You were then trying to arrive at the percentages of participation in the entire price as it then existed without the addition of additional cash; is that not right?

A. Well, when you say we were trying to, that was the basis on which the studies were furnished us.

Q. That is right. And they showed that the preferreds which had a prior claim had 86.8 percent referring to method No. 1, and the balance of the equity, whoever had it, was 13.2; is that not true?

A. Yes, subject to the fact that if you wanted to deal with the option warrants you would have to increase the equity.

Q. Does the study show that?

A. No.

Q. Does it make any reference to the option warrants?

A. There is no reference to the option warrants in any of the calculations as far as I can recall.

Q. Would you mind if we offered any one of those you select as our exhibit so we know when we read the record just exactly what we are looking at?

A. I don't believe you can take any one of them without all of them.

(R-2, 308) Q. We will take them all, that is all right.

A. Because they have varying assumptions.

Q. We will take them all, that is all right. Have you any objection to all of them?

MR. BOONE:—Off the record?

HEARING EXAMINER:—Off the record.

(Discussion off the record)

HEARING EXAMINER:—Go ahead.

By MR. JACKSON:

Q. By the way, when did you become conscious of the fact, if you did become conscious of the fact, that Bond & Share was concerned not merely with the award to its common, but also the award to the option warrants?



A. Well, the treatment of the option warrants, we had to give consideration to in the formulation of any type of plan. And my approach to the thing in the early stages was not to give the option warrants a percentage of the equity, but rather to permit them to exercise their warrants and then become common stockholders and participate as such.

Q. You knew that one of the objectives of Bond & Share, and it is a fact, was to get value for its option warrants?

A. Certainly.

Q. As well as its common stock?

A. Certainly.

(R-2, 309) Q. And when did you start to address yourself to that problem?

A. Well, I don't think I ever addressed myself to that problem, particularly, other than to express the view, which was not subsequently adopted perhaps for legal reasons, but I thought that the option warrants should participate by putting in the additional cash, exercising a subscription, and then becoming common stockholders; but that view was not accepted and did not appear in any plan, as far as I know.

Q. As a matter of fact, the provision for the option warrants in the final plan was a greater advantage to the option warrant holders than your suggestion, was it not?

A. I don't know that.

Q. You don't know?

A. No.

Q. And incidentally, did you learn in the course of these proceedings whether the management of Electric had any specific objectives here?

A. Well, I know that Mr. Dixon stated on several occasions when we had general meetings in his office that he wanted to get everybody's views and then would exercise his own judgment with the advice of counsel and Mr. Jirgal as what Electric should do.

Q. Nothing more specific than that?

A. No, sir; I do not think so.

(R-2, 310) Q. Did it ever come to your attention that the management wanted to continue the holding company?

A. Well, I knew they were litigating to that effect.

Q. I am not talking about the dissolution. They wanted to continue the electric companies in a holding company.

A. That was what was subsequently done. Put all in——

Q. I say, did you learn in the course of the proceedings that that was one of their objectives?

A. I know there was consideration given as to whether the electric properties should be held in the then present corporate structure of Electric, or whether they should be transferred to a new holding company as was subsequently done.

I know that question was under discussion, but that was a legal question that I was not primarily concerned with.

Q. No, my question is: Did you know that one of the objectives of the Electric management was to continue the electric companies in a holding company? Did you learn that?

A. Well, I think that was everybody's objective, to get the benefits of integration in their operations.

Q. Was that Bond & Share's objective, too?

A. We certainly agreed to it.

Q. As a matter of fact, was it not agreed that Bond & Share should support the management's position to endeavor to keep the properties together?

A. Yes.

(R-2, 311) Q. Wasn't that the subject of discussion?

A. Yes. I think it was stated by both Mr. Dixon and Mr. James, that they deemed it extremely desirable that those properties should be retained in a common ownership, if possible, the then owner of Electric Power and Light.

Q. And did Bond & Share take any position, or discuss the matter with you, as to what position they should take in it?

A. I don't think they discussed it particularly with me, because I think it was involved in certain legal considerations, but certainly it seemed desirable to me from the financial standpoint that you should have a single big company with securities outstanding in the hands of the public instead of five smaller companies.

Q. In asking you these questions I have particular reference to the last paragraph on page 25 which reads:

"A further meeting of Hopkinson with the EB&S group was held in New York on June 5, at which time certain tentative conclusions were reached as to EB&S's position."

I am skipping down to the third line from the bottom.

"(3) regarding the Southern System it was determined that EB&S should support EP&L's position to endeavor to keep the properties together."

Does that not refresh your recollection that you (R-2, 312) participated in conferences as to what Bond & Share's position should be on that desire of the Electric management?

A. I know I heard that, and I agreed with that conclusion because I felt that the security of the Consolidated Electric properties was the more desirable medium for a financial exchange than would be the securities of the five separate companies.

Q. What I have in mind, Mr. Hopkinson, is this, and I think maybe if I ask you a frank question, you will give me a frank answer:

Is it not a fact that Bond & Share in this situation, aside from the question of getting fair plan that would accomplish a real organization, that Bond & Share had specific objectives and the Electric management had cer-

tain specific objectives and they discussed their respective objectives and took a position, each took a position with respect to the other?

A. Well, I don't know what objectives you are referring to, other than the ones that I referred to on page 25, to which I referred as ones that were discussed at that meeting.

Q. Well, it is certainly so as to those?

A. Yes.

Q. Do you recall that there was a desire on the part of the management, or was it a desire on the part of Electric Bond & Share, that the Dallas property should be sold to (R-2, 313) American Power & Light?

A. I don't remember anything about the Dallas property.

Q. You don't recall that at all?

A. No.

Q. I am a little confused with what you told Mr. Fink. When, for the first time, did you become aware of the fact that one of Bond & Share's objectives was to keep as much United Gas as possible?

A. I can't say that that was one of Bond & Share's objectives in the early stages of the proceedings. I think probably I was one of the first people to raise the question as to why use United Gas as the sole medium for exchange; why not put the electric properties into the pot, too.

And I think that question had been raised by some preferred stockholders who preferred to have the electric properties as a better known type of investment than natural gas properties were at that time.

Q. When did you first advocate the use of the electric properties in point of time?

A. Well, sometime prior to the filing of Bond & Share's plan in May of 1946.

Q. Can you refer to some place in your statement where you indicate that you made such a recommendation?

A. Without looking at the plans referred to on page 20,

which are in the document files as Nos. 10 and 11, I don't (R-2, 314) recall whether they used only United Gas or United Gas and ALMNO, as we called it then.

But the plan referred to at the top of page 21 certainly used ALMNO.

Q. Yes, but, Mr. Hopkinson, that is not my question. My question is, if you would refer me to some place in the statement that indicates that you made the suggestion?

A. I think in the second paragraph on page 21, you will see that I say that:

"As a result of discussion, Hopkinson's suggestion to eliminate the cash from the offer and have it entirely stock of either, in the one case ALMNO, or in the other United Gas, was accepted.

"On the suggested basis, there would be sufficient United Gas to take out all the preferreds, even if all elected United Gas. This theoretically would not be the case with ALMNO so that pro ration would have to be provided if approximately over seventy percent of the preferreds elected ALMNO."

I do not want to say that nobody else considered that possibility. I think it is entirely probable that they did in exploring the alternates. But I am perfectly clear in my own mind that I advocated it.

Q. Are you not the person who advocated United Gas from the very beginning.

(R-2, 315) A. Yes. That was the basis on which the discussions had been taking place up to that time and there was enough of that to take out the preferreds in our judgment and the alternate of using the electric properties came into the picture at some later date.

Q. Then, if I understand you correctly, in the statement you just referred to, the suggestion that the one-stock plan be abandoned and that the preferreds should be retired by an exchange of United Gas came from you and Mr. York?

On page 3, I think you said that was as early as May 1945.

A. Well, we didn't go any further, according to this memorandum, which I think is correct. It says:

"York held a meeting with Messers, Calder and Walker in New York on May 31, and expressed this view"—

Referring to something that goes before——

"suggesting that consideration be given to an offering United Gas Corporation common stock to the EP&L preferred stockholders in lieu of a one-stock plan."

Q. That was in May?

A. May 31.

Q. 1945?

A. May 31.

Q. Thereafter, in October '45, you were rather busy —(R-2, 316) referring to page 6—in discussions with the staff and the various officials in an effort to get them to put the plan in that form; is that not right?

A. Well, the particular thing I was talking about at that time in exploring, was the disadvantages of the voluntary plans which had been under discussion and whether we might face realities and go right to an enforced plan.

I was not successful in having that view adopted until much later.

Q. You confuse me. Take page 6, the second full paragraph, and this is October 24:

"Hopkinson urged the desirability of promptly filing an exchange plan without specifying the precise number of United Gas shares, so as to permit hearings getting started."

That is what you were advocating then, on October 24; is that not right?

A. Yes.

Q. And Dixon expressed the fear that such a method of procedure would lead to a charge of stalling.



And then on October 26, page 7, you saw Kadane, at the SEC, and you urged upon him the method of procedure you were advocating; that is, an exchange, a voluntary exchange for United Gas; is that not true?

A. Well, I explained to them the position that I had (R-2, 317) taken and was anxious to have him and the other members of the staff who were handling the matter understand that I thought that was a method of expediting rather than delaying a consummation.

Q. And Kadane seemed interested and offered to discuss the idea with the other members of the staff and then you reported the conversation to Bond & Share by telephone; is that correct?

A. That is right.

Q. Then on November 2 the Power & Light board approved filing such a plan; is that not true?

A. I guess the telephone conversation was on the second. The board acted, I think, on the first of November.

Q. At that time you had a reservation as to the percentage of acceptance?

A. That is correct.

Q. Nevertheless, you were committed to that procedure and advocated it; is that not true?

A. Well, I went along with it although my judgment was that a higher percentage ought to be used.

Q. Right. But you were advocating the exchange, the voluntary exchange of United Gas in the most expeditious way of starting to solve the problem; were you not?

A. Provided the high enough percentage accepted so that you could be assured that you could take out the rest of (R-2, 318) it if the required percentage went along.

I always felt that was an important part of a voluntary plan.

Q. And then on November 7 Mr. Walker told you that Mr. Dixon saw no alternative except to proceed with the filing of the plan although admitting an open question as to the seventy-five percent; is that not right?

A. Yes.

Q. And Mr. Walker reported to you that the general reaction Bond & Share received with respect to the plan had been good?

A. That is correct.

Q. Thereafter, you cooperated with the Electric management and Bond & Share management cooperated with Electric management in the furthering of this plan, did you not?

A. We participated in the presentation of data at the hearings to lay the basis for a subsequent filing of an allocation.

Q. Part of the compensation that you claim here is for the services that you rendered in furthering that plan and furthering its presentation?

A. Certainly.

Q. And the plan was filed and the plan and hearings started and you cooperated in preparing testimony to further the plan at those hearings, did you not?

(R-2, 319) A. Yes.

Q. And you were then advocating the plan, were you not?

A. Yes.

Q. And Bond & Share was then advocating the plan; is that not right?

A. The type of plan, yes.

Q. That type of plan with certain exceptions. Your qualifications were as to percentage; is that not true?

A. Well, there was no qualification as far as the hearings were concerned about the percentage. That question had only been raised preliminarily with Electric Power & Light as a question of judgment as to the percentage to be used.

Q. There is no public qualification with respect to that plan by either you or Bond & Share, was there?

A. Not as far as I recall.

Q. Until when?

A. After Electric Power & Light filed their allocation and made it at a come-and-take-it plan, eliminating the required percentage of acceptance before the exchange offer became effective.

Q. And it was then that Bond & Share changed its position with respect to that plan, was it not?

A. I think also Electric changed its position, eliminating the seventy-five percent.

Q. No, no, I am not going to the reasons. It was then (R-2, 320) that Bond & Share changed its position?

A. Yes.

Q. So, as far as you were concerned, the elimination of the seventy-five percent emphasized the objection you had previously made?

A. Right.

Q. And to your mind that became so important that it was necessary to throw the whole plan overboard?

A. Well, we were also dissatisfied with the allocation.

Q. Right.

A. And when you say throw the whole plan overboard, we filed an alternate plan which we felt should be considered by the Commission as a part of its consideration of what was the solution to the problem.

Q. There had been a great number of hearings on that plan, had there not?

A. Yes.

Q. And the hearings had been closed with the exception of supplemental testimony that was to follow the allocation; is that not true.

A. The testimony had been closed, as I recall it, as far as the earnings and other description of the companies involved was concerned.

Q. And the headings were to be reopened?

A. On the question of allocation.

(R-2, 321) Q. And you remember that there was a distinct understanding with the staff and with the Electric

management that those hearings would be resumed and completed as speedily as possible, in order that the plan might be consummated by the summer?

A. No, sir. I was no party to that.

Q. Were you not aware of the fact that that was the general understanding?

A. Well, I know it was the desire of everybody to get the hearings consummated as promptly as possible, but I wouldn't say that I was ever informed there was any understanding of the acception of any agreement to any time table.

Q. Is it not the fact that the hearings and the procedure was so set up that anybody who had any objection to the allocations arrived at by Electric were in a position to object to them and told the Commission they weren't fair in that proceeding?

A. That is a legal question that I do not want to—

Q. Don't you know that is so? That will make it a lot easier. If you don't know it is so, don't tell me. As to whether it is a legal question, or not, just go into it.

A. Just who has a right to do the things you have described, I would not put myself in a position of saying because there has to be applications, as I understand it, and permission granted by the Commission.

(R-2, 322) Q. Had those allocations been independently arrived at by Electric? Independently of Bond & Share?

A. As far as I know they were arrived at independently of me.

Q. If they had been arrived at in cooperation with Bond & Share, you certainly would have known about it?

A. I assume so, but that would depend on what Bond & Share told me.

Q. And if Bond & Share had cooperated with Electric in fixing those allocations, there is no doubt in your mind that eleven would not have been the result; is that not true?

MR. JAMES:—I object to that question. That is a hypo-

thetical question as to what might have happened if certain other things were true.

MR. JACKSON:—I have had so much latitude, I will withdraw the question.

HEARING EXAMINER:—Are you not asking Mr. Hopkinson a great many things that are simply examination as to the status of the record?

All of these things appear in the record, do they not?

MR. JACKSON:—No Mr. Examiner, all of these things don't.

HEARING EXAMINER:—As to what happened in the hearing.

Very well, proceed.

MR. JACKSON:—I have not had enough chance to examine his statement to make my cross-examination concise, and it is (R-2, 323) bound to be a rather rambling thing as it is wholly extemporaneous, unfortunately.

MR. JAMES:—May I ask a clarifying question, Mr. Jackson? You have asked one question, and I am not clear as to what Mr. Hopkinson's answer was intended to mean.

MR. JACKSON:—Yes.

MR. JAMES:—You were asked whether in connection with the Electric plan prior to the May 3, 1946 amendment, you cooperated in preparation of testimony and you answered yes.

With whom did you cooperate? With Electric Power & Light or with Electric Bond & Share?

THE WITNESS:—Electric Bond and Share.

MR. JAMES:—Thank you.

MR. JACKSON:—I am sorry, I meant to go into that.

By MR. JACKSON:

Q. In the preparation of your testimony your efforts, within the realm of fairness, were to decrease the inclusion of investment value of the preferred?

A. Well, at the time I testified in support of the original plan that could not be so because there had been no allocation filed.

My testimony was designed to show the features which I regarded of strength and growth possibilities of both of these companies.

Q. I needn't remind you that the purpose of the (R-2, 324) hearing was to adduce evidence that would enable the management, independently to fix ratios considered fair, that it considered fair?

A. And also for the Commission to pass on the fairness of the ratios if the parties were not able to agree.

Q. Right.

And your testimony was directed to show a greater value for the equity?

A. Well, a greater value for the properties; and if you showed a greater value for the properties, obviously it would increase the participation of the equity.

Q. And when Electric filed its allocations, then it was apparent there was a disagreement between Electric Bond & Share?

A. Yes.

Q. By the way, let me ask you about these option warrants.

I see one of these studies, in method 1, study 1, it shows a then estimated value for the common stock, and I am referring to page 2, of \$4.70.

On the basis of that or these other studies, did you figure on a value for the option warrants?

A. As I say, it has been a number of years since I looked at those calculations, and I do not think we figured on any values for anything as a result of these. They were (R-2, 325) based on certain assumptions which we all agreed were not realistic and therefore if the assumptions are not realistic, the end result would not be.

Q. In other words, you were drawing conclusions from assumptions that you conceded were unrealistic?

A. No, we didn't draw any conclusions from them.

Q. Did you draw the conclusion that a one-stock plan would not be profitable to Bond & Share?



A. On the basis of those estimates, and we also, as I have said three or four times, were convinced that a one-stock plan was not the most satisfactory way to deal with the kind of a problem facing the company.

Q. Now, I think in the course of your examination by Mr. Fink, you said that there were different market values in 1946 and 1948 for United Gas.

A. I said the level of market capitalization ratios and yields had very materially changed between the summer of 1946 and any later date up into well into 1949.

Q. Was not the market price of United Gas within the same range in approximately both of these periods?

A. The market price of United Gas during that period was affected by the many considerations which I do not think we need to go into now.

Q. I agree with that. If you will answer that question we will not go into it.

(R-2, 326) The question was: Is it not a fact that the market prices of United Gas were approximately the same both in 1946 and this affected period, and 1948?

A. I would have to refresh my recollection. I don't recall.

Q. Suppose I show you this, and if you will take my word for it that it is correct, I will repeat my question, and then you can tell me.

Were they not approximately the same during these plan periods of '46 and '48?

A. Well, in 1946, the plans were filed in May, the price here is shown for May 1 as 19 and three-quarters—20; June 2, nineteen and one-quarter—19 and one-half.

In March of 1948, the March 1 price is given as 17 and three-eighths—17 and three-quarters; and the April 1, 1948 price, 18 and one-quarter—18 and one-half.

Q. And June?

A. And June, 19 and five-eighths—19 and seven-eighths.

Q. That is close enough, Thank you.

In your opinion, or in the opinion of your client, what was the range of equitable equivalents, fair equitable equivalents for the preferreds? Seven dollar preferreds, specifically.

MR. BOONE:—Mr. Jackson, is not that in the record of the case?

MR. JACKSON:—I do not know.

(R-2, 327) MR. BOONE:—I think it is.

MR. JACKSON:—The '46 case?

MR. BOONE:—I wouldn't say that it is. I am going on the assumption that pretty near everything went in there.

MR. JACKSON:—You are really right, I will withdraw the question and I simply call your attention, just for the record, so we can find it when we want it, to page 25 of Mr. Hopkinson's statement that refers to a meeting of Mr. Hopkinson with the Bond and Share group at which time certain tentative conclusions were reached as to Bond & Share's position and second, that the claims of the parties to a dollar amount under the equitable equivalent theory seemed to lie within a range of 175 to 199 a share for the seven dollar preferred.

By MR. JACKSON:

Q. Do you happen to know what percentage of the equity the common and the option warrants got into the plan as finally confirmed, Mr. Hopkinson?

A. No. That would depend upon the values you attributed to them.

Q. No, that depends on the values the Commission attributed.

A. All right.

Q. Do you happen to know what those percentages were?

A. No, I don't.

(R-2, 328) Q. Do you happen to know what the estimated earnings were at the time of the final plans?

A. I have no present recollection of them. I have no doubt that I have them in my files and was familiar with them at the time.

MR. JACKSON:—Thank you, Mr. Hopkinson.

MR. FINK:—Do you have any questions, Mr. James?

MR. JAMES:—I have no questions.

MR. FINK:—I have one or two further questions I would like to ask.

*Cross Examination (continued)*

By MR. FINK.

Q. During the course of Mr. Jackson's examination, I took occasion to examine these documents you had left with me very briefly, and in a very cursory way.

Can you tell us on what basis these documents were assembled and what their particular purpose is?

A. They were assembled to supplement exhibits in the record, in some cases to show the magnitude of the work of preparation through different draft documents which were in the record which generally speaking I have omitted, and to illustrate the type of preparation that went into the case beyond that which appears in the record itself.

Q. They do not purport to be all of the drafts?

A. Oh, no; quite the contrary. Because in my affidavit (R-2, 329) I referred to second, third, and fourth and fifth proofs in many instances, and we have only just put in perhaps one to indicate the scope of the document we are referring to.

Q. Nor are there included in those documents any views or opinions or memoranda sent by you to Bond & Share or by Bond & Share to you with respect to any of the controversial features of the plan?

A. Well, it would be a little difficult to answer that without reviewing them again, but I would think that some of them did represent studies that had either been made by us and furnished Bond & Share, or been made by Bond & Share and Ebaseco and furnished to us.

But the purpose of their inclusion was not to deal with controversial issues that had been settled, but rather

to show the scope of the work that had been done in the preparation of the case.

Q. They don't include any memoranda or drafts that were not in some form finally used in the case?

A. I think they might.

Q. Mr. Hopkinson, can you tell us what the overall arrangements are between you and Bond & Share or your firm and Bond & Share as to compensation for your services?

A. At the first talk we had regarding the matter, and I think that is the only talk we have had about compensation except to fix it in one phase of the Bond & Share's own plan (R-2, 330) where a fee has been approved, was that nobody could tell the extent of the work or what it was going to involve and I was warned that it would be subject in all probability to approval by the Securities and Exchange Commission anyway, so there didn't seem to be much point in trying to do anything more.

We understood they would pay us, of course, for our services, but they could only pay us, they believed, such amount as might be approved by the Commission.

Q. There was no formal agreement entered into between you and Bond & Share?

A. No, sir.

Q. Are you committed to be available at any particular time, or upon call, or any definite amount of time that you may devote to Bond & Share?

A. No. We have tried to make ourselves available whenever the occasion required and I think we always have and I do not believe we have ever delayed any step that they wanted to take by reason of either me or one of my partners not being available to work with them.

MR. JACKSON:—May I ask just one question?

Am I correct in assuming that during the latter phases of your work it was confined largely, or if not largely, almost entirely, to your efforts to assist Bond & Share in the common stock contentions against the preferred?

A. Well, I don't think you are stating it quite clearly (R-2, 331) when you put it that way. It was to assist Bond & Share in seeing that their interests were properly presented for consideration by the Commission and such facts or opinions as could appropriately be brought out were put in the record.

MR. JACKSON:—I did not mean to indulge in any nuances to which you would object, but what I was trying to ask was didn't the principal controversy during the last stages concern itself with, and wasn't your work concerned with the principal controversy in the last stages, which was largely as between the preferred and the common?

THE WITNESS:—Plus the option warrants, to some extent.

MR. JACKSON:—Yes, thank you.

MR. FINK:—May we stipulate that the staff for the Commission may make use of not only the record in this case, but of other records in which Mr. Hopkinson has testified in Bond & Share proceedings, as well as briefs in those proceedings which contain analysis of the testimony of Mr. Hopkinson, if such material should be pertinent to any recommended decision or decision in this matter?

MR. JACKSON:—We might as well have the record show what Mr. Hopkinson's various retainers were and what the controversy was in each of the matters.

There cannot be so many of them. Would that not help in this record?

Let me ask two or three questions on that. That has (R-2, 332) suggested something to me that I think might be helpful.

Were you retained by Bond & Share in the American Power & Light reorganization?

MR. FINK:—I have gone through that.

MR. JACKSON:—I was going to ask what the principal controversy was.

THE WITNESS:—United Power & Light?

MR. JACKSON:—American Power & Light.

THE WITNESS:—I have been consulted by Bond & Share in connection with various plans in American Power & Light. I did not testify in that case.

MR. JACKSON:—Can you recall what Bond & Share's principal holdings were in that? Common or preferred, or option warrants?

THE WITNESS:—Well, it was certainly not principally preferred.

MR. JACKSON:—Principally common?

THE WITNESS:—I should think principally common. I don't recall.

MR. JACKSON:—Was not the principal controversy there common versus preferred?

THE WITNESS:—Surely a question of allocation as between preferred and common as between one type of another between the various plans was considered.

MR. JACKSON:—In what other proceedings pending before the (R-2, 333) Commission or completed were you retained by Bond & Share?

THE WITNESS:—I was retained by Bond & Share and testified for them in their various steps under their own plan to eliminate the preferred stocks and the amount to which the preferred stocks might be entitled.

And the other matter is the one that has been already referred to in American and Foreign Power.

MR. JACKSON:—In the Bond & Share situation, the controversy was there the right of the preferreds to a redemption premium with Bond & Share asserting the contrary?

THE WITNESS:—That is right.

MR. JACKSON:—You being retained by Bond & Share to help them shared in that controversy?

THE WITNESS:—If you use the word help the way I think you do.

MR. JACKSON:—In what other proceedings have you been?



THE WITNESS:—I think they are the only proceedings involving that.

MR. FINK:—Pacific Power & Light?

THE WITNESS:—That was a job for American Power and Light, not for Electric Bond & Share.

MR. JACKSON:—Let me include any subsidiaries or affiliates of Bond & Share?

THE WITNESS:—I testified in connection with the merger proceedings between Northwestern and Pacific under a retainer (R-2, 334) from American Power & Light.

MR. JACKSON:—Was there controversy there?

THE WITNESS:—I don't think there was active controversy. There was testimony required to support an exchange plan giving new preferred stocks for the old.

MR. JACKSON:—And in American and Foreign Power you were retained by Bond & Share to further its rights?

THE WITNESS:—To advise with them regarding its course of action, I would say.

MR. JACKSON:—And there they have a debt position and second preferred stock position and common stock position?

THE WITNESS:—Yes, and I guess also option warrants.

MR. JACKSON:—There the controversy is one as to allocations as to preferred?

THE WITNESS:—Allocation or take out in one form or another.

MR. JACKSON:—Thank you.

MR. BOONE:—Mr. Hopkinson, so that the record will be complete at this time, I think there was some statement made by counsel for the Commission as to the question of whether you had given any testimony on investment value in the plan 2(a) proceeding. We have the record here and it would seem to indicate that you didn't.

THE WITNESS:—I did not?

MR. BOONE:—Yes.

(R-2, 335) THE WITNESS:—I think the investment value came up later after the amendment was filed.

• • • • •

(R-2, 369) LESTER GINSBURG, was called as a witness, and, having been first duly sworn was examined and testified as follows:

*Direct Examination.*

By MR. BOONE:

Q. Your name and address, please.

A. Lester Ginsburg, 519 86th Street, New York 28, New York.

Q. What is your present occupation, and how long have you been engaged therein?

A. I am at present Vice President of Electric Bond and Share Company, and prior thereto, beginning April, 1945, I was its Treasurer. I joined the Electric Bond and Share Company on April 9th, 1945.

Q. Are you familiar with the proceedings involving the plans for compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act of (R-2, 370) 1935?

A. Yes, with those plans concerning that subject filed, beginning in 1945.

Q. Are you familiar with the work done by Electric Bond and Share Company and that done on its behalf in connection with those plans?

A. Yes.

Q. Are you familiar with the work done by Benjamin T. Brooks, Ralph E. Davis, Drexel & Company, Reid & Priest, and Ebasco Services Incorporated?

A. Yes.

Q. Have you read the affidavits which relate to the respective charges for the services rendered by the individuals and firms to which I have just referred?

A. Yes.

Q. Are you familiar with the fees requested, and the charges incurred for expenses of all such individuals and firms?

A. Yes.

Q. Do you consider such fees and expenses fair and reasonable?

A. Yes. The fees were fixed after consultation with the management of Electric Bond and Share Company and have been agreed to by Electric Bond and Share Company as fair and equitable.

(R-2, 371) The expenses, of course, are at cost and, from my own experience in connection with expenses of such nature, I believe they are fair and I feel they should be allowed.

. . . . .

(R-2, 372) Q. Now, referring to Electric Bond and Share Company's Exhibit F-4, which is the Petition and Affidavit of Drexel & Company, will you please identify that firm?

(R-2, 373) A. Mr. Hopkinson of that firm has acted on their behalf in advising Electric Bond and Share Company during the last five years, on many matters involving Bond and Share in the proceedings before the Commission, notably Electric Bond and Share Company's own plans for compliance with the Act, Electric Power & Light Corporation's for compliance with the Act, American Power & Light Company's plans and to date to a lesser extent in connection with the plans of American & Foreign Power Company, Inc.

Drexel & Company is not on a retainer basis, but is paid for the work done at our request.

During parts of each of the years 1945 or 1946, 1947, 1948 and 1949 we were, as the testimony indicates, in frequent contact with Mr. Hopkinson in connection with Electric Power & Light Corporation's plans.

Mr. Hopkinson and that firm, in our opinion, are peculiarly qualified for the type of services they have rendered in these proceedings and, in our opinion, their services have been valuable, and the fee they have rendered is fair and reasonable. We believe they made a real contribution in working out the various matters involved in

the plans for compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act.

I am familiar with their testimony and with their services as described. May I again repeat, I think the fee is (R-2, 374) fair and reasonable.

Q. What further have you to say as to the services performed by the affiants, to which you have referred?

A. There is an enormous amount of work, much more than is appreciated, I am certain, in connection with matters of this nature.

The affidavits of Ebasco, Drexel & Company, and Reid & Priest show clearly the scope of the work done. In all, there were filed, beginning in 1945, at least seven formal plans, by Electric Power & Light Corporation, Electric Bond and Share Company, and others intrested in these proceedings.

In addition, there were suggestions made as to what would be a fair and equitable plan by others.

In addition to the actual preparation of some of these plans, analysis and review were had of every plan filed and those which you might say were in the nature of suggestions. Not only was that done, but analysis and review of the amendments filed thereto were made.

As is shown by the affidavit filed on behalf of Reid & Priest, the hearings on these plans, were extensive and involved the presence at these hearings not only of counsel, but others on behalf of Electric Bond and Share Company. These hearings were preceded by much preparation, including the assembling of data necessary to an adequate presentation of views in these various matters.

(R-2, 375) The official transcript of the proceedings shows the extent and scope of testimony and the cross-examination, including the various exhibits offered in evidence, in addition to the many exhibits which may have been prepared and put in evidence, and there are always those which are prepared but for one reason or another are not offered.

Q. I call your attention to Electric Bond and Share Company's Exhibit F-6, which is entitled "Petition of Electric Bond and Share Company for reimbursement of fees and expenses."

Attached to this petition are affidavits on behalf of Ebasco Services Incorporated and of Reid & Priest, which affidavits are identical with those made on behalf of those two parties, and made a part of Electric Bond and Share Company's Exhibit F-3.

In Electric Bond and Share Company's Exhibit F-6 reference is also made to the fee of Drexel & Company which is covered by Electric Bond and Share Company's Exhibit F-4. That is quite a leading question, Mr. Ginsburg. That is correct, is it not?

A. Yes.

Q. My understanding of Electric Bond and Share Company's Exhibit F-6 is that Electric Bond and Share Company is seeking reimbursement from the Estate of Electric Power & Light Corporation for the fees to be paid by Electric Bond (R-2, 376) and Share Company and approved by the Commission, to Ebasco Services Incorporated, Reid & Priest, and Drexel & Company. Is that correct?

A. Yes. It is the opinion of Electric Bond and Share Company that while these three parties were employed by Electric Bond and Share Company and in the first instance their fees, if approved by the Commission, will be paid by Electric Bond and Share Company, that the services rendered and performed by such parties and by the officials of Bond and Share, including Messrs. Calder, Walker, Talmage and myself, all of which is reflected in the services performed by Ebasco Services Incorporated, Drexel & Company, and Reid & Priest, were for the benefit of all the stockholders of Electric Power & Light Corporation, and that, as a consequence, Electric Bond and Share Company should be reimbursed by the estate of Electric Power & Light Corporation for the fees and expenses paid to such parties.

. . . . .

(R-2, 379) A. Your particular attention is invited to the testimony of Drexel & Company, which had much to do with fairly evaluating the rights of the various stockholders of Electric Power & Light Corporation.

The work of Ebasco Services Incorporated, in the preparation of exhibits and other matters necessary to a presentation of the approach to Electric Bond and Share Company to these problems was necessary and, of course, to present that approach adequately it was necessary for Bond and Share to have its own attorneys.

If it were not for the participation of Bond and Share and its experts in this case, much testimony which was of great importance in this case would never have been adduced.

I call to the attention of this Commission the fact that our direct and cross-examination brought out information which was not otherwise available, and that our testimony (R-2, 380) on earnings has been more than supported by the record of Electric's subsidiaries.

I also think the record will show clearly the Electric Bond and Share Company was responsible for proposing the first over-all comprehensive plan for the solution of all the problems of Electric under the Act, and that its plan, dated May 9, 1946, provided the framework in all essentials, both of the later compromise plan of July 1, 1946, and the plan finally approved by the Commission.

. . . . .

(R-2, 381) Q. In connection with the plan which was filed on November 6, 1945, did Bond and Share work in conjunction with Electric?

A. Yes. Much of the data which was assembled was used in common by Electric and Bond and Share. There was an interchange of data.

One of the first things that Bond and Share did was to employ Drexel & Company to assist it in these various matters (R-2, 382) which were then arising and which Bond and Share foresaw would continue to arise in con-



nection of any plan of Electric filed under Section 11. Electric presented a highly complex and involved situation.

Bond and Share felt that in the interests of all concerned it was necessary that the best possible advice be obtained. In addition, it was necessary that Ebasco Services Incorporated be employed, as Bond and Share itself had no staff which permitted it to assemble the vast amount of data which was required in connection with the Electric proceedings. It was also necessary that Bond and Share have its own counsel at all times.

Q. Did you confer with the Electric people prior to the formation and filing of the November, 1945, Electric Plan?

A. Yes. Many times. Not only did we confer with them, but with them and members of the staff of the Commission as well. It was felt that we all had a common interest in getting together that type of plan which would best solve the problems of Electric under the Act.

As the record in cases of this nature shows, there is not always unanimity concerning the type of plan nor the procedure to be followed. No one need be surprised at that. I think it may well be said in the Electric situation that the various types of plans filed finally were progressive, (R-2, 383) and brought about the filing of the one which was consummated, and which has proved to be efficacious, fairly meeting the problems involved.

Q. Were you all in accord prior to the date of filing of the Electric Plan in November of 1945, that this was the type of plan that should be filed?

A. No. We had very different views as to what should be filed. Bond and Share always had the feeling that some sort of an over-all comprehensive compulsory plan, taking out all classes of security holders and the settlement of the claims was the objective most desirable.

Q. Did you make known your views in this regard in the year 1945?

A. Yes, we did. But, as I have said, the solutions for

matters of this size and consequence are not decided all at once. It seemed almost inevitable that trial and error has its day and say in working out problems of this consequence.

We were advised by Mr. Hopkinson in the early Fall of 1945 that his view was that any plan should deal with all preferred stocks at the same time, and that while a voluntary plan seemed to have its good points, yet sooner or later an enforced plan on balance was the most desirable way of working this matter out.

In fact, Mr. Hopkinson had talks with the Commission's (R-2, 384) staff and also with Mr. Dixon and with Mr. Jirgal on this point.

It seemed, however, quite clear to us that the Electric people were not convinced that an involuntary over-all plan was the type of plan to follow at that time.

Therefore, Bond and Share lent its support to the type of plan which was filed in November, 1945, which was an open-end plan.

Bond and Share was not impressed with the 75 per cent acceptance feature on the part of the preferred stockholders which the plan provided, for Bond and Share was of the opinion that 25 per cent of the preferred stock was too large an amount to remain outstanding, particularly since it improved the position of the remaining preferred, and urged that the percentage figure be increased to at least 90 per cent. However, this was not done.

**Q.** Now, immediately following the filing of the Electric Plan in November, 1945, what was then done by Bond and Share?

**A.** It then became necessary to prepare definitively for the hearings which would be held on that plan. This involved, on the part of Bond and Share, the preparation of exhibits and the review of exhibits prepared by Electric which were furnished to us. It also involved the preparation of charts and figures on the part of United Gas Corpora- (R-2, 385) tion and the bringing down to date of

data which had been prepared prior to the filing of the Plan. The hearings on the Electric Plan were complicated, as you will recall, and delayed by the death of Mr. Sam Davis of the United Gas Corporation. This necessitated an adjournment to the early part of February.

Conferences were constantly being held and the reactions obtained from various sources. It became more and more evident that an enforced plan to cover all the preferreds was desirable. In fact, Bond and Share had conferences with the Electric people with the idea of amending the Electric Plan to take it off the voluntary footing, but Mr. Dixon of Electric favored proceeding with the hearings on the plan as filed, and then determining, before the record was closed, whether the plan should become a complete enforced one. Many, many conferences were held prior to the start of the hearings, and many exhibits were prepared which would be used at these hearings.

Reference to the petition and statement of services rendered of Mr. Edward Hopkinson, Jr., Electric Bond and Share Company's Exhibit F-4 makes this very clear.

Q. You say many exhibits were filed?

A. Yes. Up to and including April, 1946, Bond and Share put in 72 exhibits of its own. To prepare these exhibits required, as I have stated, many, many times and other (R-2, 386) back-up data.

Q. What other work was done by Bond and Share in connection with Electric's plan filed in November, 1945?

A. In collaboration with Messrs. Hopkinson and York of Drexel & Company, work was done on preparation and coordination of testimony and exhibits.

We had many conferences with these people, obtaining their suggestions relative to cross-examination of the various witnesses which Electric was putting on the stand in support of its Plan.

The hearings started in February, at which we were in constant attendance and reviewed each day's record, as it was furnished us. These hearings adjourned to February 14, 1946.

Prior to their taking up, Mr. Jackson's petition and plan, dated January 26, 1946, was filed, also the Louria petition and plan, dated February 2, 1946. Mr. Jackson's plan dealt with taking out the preferreds in United Gas common and in cash, with no provision for the common or for the claims.

The Louria plan dealt solely with the second preferred stock and provided that is was to be taken out with five shares of common stock of New Orleans Public Service, Inc.

Preliminary to the hearings again taking up on March 25, 1946, further studies were made.

On March 25, 1946. Ralph Davis testified, and on April (R-2, 387) 5, 1946, Dr. Brooks.

On April 9, 1946, Mr. Hopkinson's testimony was stipulated into the record.

As these hearings progressed, it became more evident that the piecemeal plan filed by Electric in November, 1945, was not going to be effective. Hence, Bond and Share continued its studies on a different type of plan, which was over-all in its purpose and would have the effect of settling comprehensively, if possible, the various problems of Electric. These studies were furnished to Mr. Hopkinson for his comment.

Further direct examination was had of Mr. Hopkinson in April, 1946, and further exhibits were introduced. Cross-examination by Mr. Freiberg of Mr. Hopkinson started on April 18, 1946.

Subsequent to Mr. Hopkinson's testimony, the question was again taken up as to whether there should be any change made in the Electric Plan.

A general discussion of this whole matter was held in New York on April 26, 1946, participated in by Bond and Share's representatives, and Electric's representatives, and also Messrs. Stathas and Burge, Duff and Phelps, Percival E. Jackson, Stanley Russell, of Lazard Freres, George Bennett of State Street Investment Trust, and John Jirgal, advisor to Electric Power & Light.

This was called for the purpose of discussing what (R-2, 388) number of shares of United Gas would constitute a fair exchange, and also whether the ALMNO property should be included in the exchange, either as a part of the package or as an alternative.

The various groups were unable to arrive at any agreed ratios, and the Electric people expressed no view.

As the matter continued, it became more and more evident that the plan filed by Electric would not succeed. Hence, we continued our studies on an enforced over-all plan.

The Electric people kept their own counsel in the matter and filed an amendment to their plan suggesting the number of shares of United that should be exchanged on a voluntary basis for the preferreds.

Q. What did Bond and Share do at that time, since, as I understand it, the Electric Plan originally filed in November, 1945, had not become complete by the filing of the amendment on May 2, 1946?

A. We held an executive committee meeting, and announced immediately thereafter our opposition to the Plan filed by Electric and stated that Bond and Share would file its own Plan. This it did, on May 9, 1946. Its plan, in substance, provided for full compliance by Electric with Section 11 of the Act.

In brief, it proposed the organization of a new company, the retirement of all the outstanding preferred and second (R-2, 389) preferred stocks of the Company, including the accumulated and unpaid dividends, the settlement and discharge of claims, the liquidation and dissolution of Electric, and the distribution of its remaining assets among its common stockholders and option warrant holders.

Specifically, there were two parts to the plan. The first involved a voluntary exchange offer of common stock of the new company or of United.

The second part of the plan involved an involuntary retirement of the preferred stocks that were not voluntarily exchanged on a cash basis.

Q. After Bond and Share filed its plan, what was the next step taken by it?

A. After Bond and Share filed its plan, various conferences were held by Bond and Share and Electric with the staff of the Commission. At first these conferences had more to do with which Plan would be given the right-of-way, whether it would be the Electric Plan or whether it would be the new Bond and Share Plan. In fact, the matter came to a head as the result of a conference on May 20, 1946, when representatives of Bond and Share and Electric met with the staff, and the staff urged that if it were at all possible, Electric and Bond and Share should get together and agree upon a plan of ratios which would have not only the united support of the two companies, but of the principal stockholders, as (R-2, 390) well.

As a result of this conference, further conferences were held and an earnest endeavor made to see if differences could not be reconciled.

On May 31, 1946, Mr. Calder of Bond and Share and Mr. Dixon of Electric had a further conference with the staff.

On June 6, 1946, a discussion was again had with the Electric people, and their representatives, including Mr. Jirgal, at which the matter of a compromise was again discussed.

At this juncture, one of the substantial stockholders, of Electric, suggested a convertible preferred stock. This idea was given considerable thought and consideration, and finally the idea was abandoned.

On June 17th, 1946, the Electric people and Bond and Share agreed on a basis for a compromise plan which, among other things, provided ten shares of United for \$7 preferred stock of Electric or 9 shares of Southern Electric, the settlement of claims for \$2,200,000, and Electric was to put certain cash into the new company.

Subsequent to this date, further conferences were had among our groups, and also with the Electric people, as



to certain changes which should be incorporated in the compromise plan to be filed. These changes were all agreed on and the plan was jointly executed and filed by Electric and (R-2, 391) Bond and Share on about July 1, 1946.

Q. What did Bond and Share do subsequent to the filing of the compromise plan?

A. Again it was necessary to revise exhibits, and get our testimony in shape for the hearings, which would take place on the compromise plan.

Work went into preparing for these hearings. Not only did we work on and review our own material, but the information given to us by Electric was also reviewed, and suggestions were made concerning the same. It was necessary to revise earnings estimates, which was done.

Hearings started on the new plan on August 6th, 1946, and at which time not only was the Electric testimony to be put on, but testimony for Bond and Share as well, and also cross-examination was had of the various witnesses. Mr. Burke of Duff & Phelps also took the stand in opposition to the plan. This required study of his testimony.

Preparatory to cross-examination, a study was made of the various data used by Mr. Burke and by Hopkinson. At the end of these hearings, Bond and Share had put in the record over 150 exhibits. Following conclusion of the hearings, the next phase involved the preparation of briefs. The matter was finally submitted to the Commission, after oral argument, the oral argument being had on September 20.

Then followed a considerable period of time when nothing (R-2, 392) concrete was done.

In the early months of 1947, it appeared that the compromise plan might not be feasible, and thought was then given to perhaps what the future procedure would be.

This involved more conferences among Electric, the staff, and Bond and Share, regarding possible modification of the Electric Plan, and the possibility of further changes in the allocations.

In October, Bond and Share and Electric attended a conference with the staff of the Commission, and at that conference, the Commission suggested that a complete enforced exchange plan should be developed.

This was agreeable to Bond and Share.

Much more work was done in November, and in January, after various conferences among the staff, Electric and Bond and Share, it was pretty much agreed that a plan should be developed which would involve a single package of United and ALMNO and possibly some cash, and that the option warrant holders should receive treatment in the new plan. There was at this point urged a convertible preferred stock of United Gas and debentures of ALMNO which suggestion was made by an outside stockholder.

Considerable thought was given to this matter, but it was determined that it did not afford a satisfactory solution to the problem.

(R-2, 393) Beginning the middle of March, various conferences were held by Bond and Share, Electric, and prominent stockholders; and as a result of these conferences, a settlement was finally effected, which culminated in the filing by Electric on March 25, 1948, of the plan which was ultimately consummated.

Q. Bond and Share, from the very beginning, as I understand your testimony, and that of Mr. Hopkinson, as evidenced by his affidavits, and by the questions asked him and the answers—by Mr. Jackson this afternoon—and the answers given by Mr. Hopkinson, was in favor of an involuntary over-all plan. Is that correct?

A. That is certainly true. It believed from the start, and it so advocated, a plan which took out all classes of stockholders and option warrant holders, settled intra-system claims, and effected the dissolution of Electric. That is the type of plan which was ultimately consummated.

Bond and Share was the only participant in these proceedings which talked and acted that objective from the beginning.

. . . . .  
(R-2, 398) Q. Are you familiar with the circumstances under which Drexel & Company was engaged by Bond and Share?

A. Not initially, no, except so far as Mr. Walker or Mr. Calder told me after their initial conversations with Mr. Hopkinson.

Q. Is there anything you can add to what Mr. Walker or Mr. Calder told you about their initial conferences, and I invite hearsay?

A. I think Mr. Hopkinson gave an accurate presentation to the best of my knowledge, as to those conversations.

Q. Was it your understanding that Mr. Hopkinson and Drexel & Company were engaged by you to consult and advise on general matters of Electric Bond and Share Company having (R-2, 399) to do with their problems under the Holding Company Act?

A. Well, my understanding is best expressed this way: that at the time Mr. Hopkinson first talked to Mr. Walker and Mr. Calder, there were two specific problems of pressing importance to Bond and Share on which we thought we could use the advice and assistance of Drexel & Company. Those were problems connected with the retirement of our preferred stock and also problems connected with the reorganization of Electric Power & Light Corporation. It was anticipated that, as time went on, we would have other problems which we might or might not refer to Drexel & Company. The extent to which we have utilized the services of Drexel & Company varies considerably from proceeding to proceeding.

Q. At the time of May, 1945, when Drexel & Company was initially retained, the only two matters of reorganization policy that had really come to a head were Electric

Power & Light and the necessity of doing something about the preferred stock. Is that correct?

A. Yes. I may be able to help clear up the record a little bit on that particular point. Some of the questions that have been asked in the hearings so far went to the question of the extent to which Drexel & Company participated in the formulation of the over-all plans of Bond and Share for compliance with the Act.

The policy of Bond and Share with respect to its program (R-2, 400) for over-all compliance with the Act had been formulated before I was made an officer, or became associated with Bond and Share, and consequently, before Mr. Hopkinson was hired by Bond and Share.

Mr. Calder, as you will recall, has testified in another proceeding that the over-all program of Bond and Share as expressed in its plans for compliance with the Act was the policy on the basis of which he took the job of Chairman of the Board in November, 1944. The general policy was very definitely crystalized by April of 1945 when I became associated with the Company.

Now, the specific problems, for example, with which Mr. Hopkinson and I had to deal initially in connection with the retirement of the preferred stock were whether it was desirable to separate the retirement of the preferred stock into two parts, to make the initial \$30 payment, and reserve the balance.

Mr. Hopkinson advised us on that. There was the question, for example, as to how we should handle the remainder of the payment, whether we should file a final Plan 2. Mr. Hopkinson advised us as to the desirability of making Plan 2 an open-end plan.

I say that just to clarify the nature of the work that Drexel & Company was doing on our general plans for compliance with the Act at that time.

212a      *Findings and Opinion Regarding Fees.*

(R-3, 174) (Holding Company Act Release No. 11175)

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

April 21, 1952

*In the Matter of*

ELECTRIC POWER & LIGHT CORPORATION

File No. 54-139

(Public Utility Holding Company Act  
of 1935)

*In the Matter of*

ELECTRIC BOND AND SHARE COMPANY  
ELECTRIC POWER & LIGHT CORPORATION,  
ET AL.

*Respondents*

File No. 59-12

(Public Utility Holding Company Act  
of 1935)

Findings and  
Opinion of the  
Commission Re-  
garding Fees  
Arising Out of  
Section 11(e)  
Proceedings

SIMPLIFICATION OF HOLDING COMPANY SYSTEM

*Allowance and Allocation of Fees and Expenses*

In connection with plan of reorganization previously approved under Section 11(e) of the Act, which plan provided for the payment by the applicant of such fees and expenses as the Commission should find reasonable, the Commission considered standards applied by the Federal courts in cases arising under the Bankruptcy Act and also considered the benefit conferred by each claimant in the reorganization, the time spent thereon, the difficulty of the

problems involved, the experience of the claimant, and other matters, including the financial position of the applicant.

*Allowance of Fees and Expenses—Effect of Claimant's Trading in Securities Affected by Reorganization During Course of Proceedings*

In passing upon applications for compensation where claimants, during the course of the reorganization proceedings engaged in transactions in securities affected by the reorganization, the Commission considered the effect of such trading on the value of services rendered.

(R-3, 175) *Allowance of Fees and Expenses—Reimbursement of Parent Denied for Expenses Incurred in Reorganization of Subsidiary*

Application by parent holding company for reimbursement of expenses incurred in reorganization of subsidiary holding company *denied* in the light of the duality of parent's interest, the claims for subordination of the parent, the history of parent's creation and domination of subsidiary, and the integrated nature of Section 11(e) proceedings making impossible separation of "Deep Rock" aspects of the case from allocation aspects of the case.

**Appearances:**

*Daniel James*, of Cahill, Gordon, Zachry and Reindel, for Electric Power & Light Corporation.

*James L. Boone* and *B. H. Dewey, Jr.*, of Reid & Priest. and *John F. MacLane* and *Benjamin C. Milner, III* of Simpson, Thacher & Bartlett, for Electric Bond and Share Company.

*Percival E. Jackson*, *Bernard S. Kanton* and *Theodore N. Tarlau*, for Electric Power & Light Corporation \$7 and \$6 Preferred Stockholders Committee.



*Jules Whitehorn and Victor Whitehorn*, of Whitehorn & Cowin, for *Alexander L. Louria, et al.*, \$7 Second Preferred Stockholders.

*Abraham M. Buchman and Henry J. Buchman*, of Buchman and Buchman, for \$7 Second Preferred Stockholders.

*Israel Beckhardt*, for *Eva Liner*, a \$7 Preferred Stockholder.

*John J. Burns and John F. Rich*, of Burns, Blake and Rich, for *Christian A. Johnson and Cameron Biewend*, individually and for *Biewend-Johnson Stockholders Committee*.

*Nathan B. Kogan and Samuel M. Koenigsberg*, for *Jacob Sincoff* individually and for *Sincoff Committee of common stockholders*.

*James H. Hulpin* of Spence, Hotchkiss, Parker & Dur-  
yee, for *James A. Walsh and Stanley F. Palmer*.

*Marvin S. Fink*, for the *Division of Public Utilities of the Commission*.

(R-3, 176) We are here concerned with applications for compensation and reimbursement of disbursements incurred in connection with proceedings under Section 11 of the Public Utility Holding Company Act of 1935 relating to the liquidation and dissolution of Electric Power & Light Corporation ("Electric"), a registered holding company subsidiary of Electric Bond and Share Company ("Bond and Share"), also a registered holding company.

On March 1, 1949, the Commission issued its Findings and Opinion stating that it could approve the plan of reorganization of Electric, filed pursuant to Section 11 (e) of the Act, if such plan were amended in certain respects including, *inter alia*, acknowledgment by Electric of jurisdiction of the Commission to pass upon fees and expenses

incurred in connection with the proceedings, and an agreement on the part of Electric to pay such fees and expenses as the Commission should find appropriate, subject to the right of Electric to seek judicial review of any order the Commission might issue in connection therewith.<sup>1</sup> On March 7, 1949, the Commission issued its order approving the plan, as amended.<sup>2</sup> The plan was subsequently approved and ordered enforced by a United States District Court, and that order was affirmed on appeal by the Court of Appeals for the Second Circuit.<sup>3</sup> Stays were denied by that Court and the Supreme Court of the United States,<sup>4</sup> and the plan has since been consummated in accordance with its terms.

Applications for fees and reimbursement of expenses have been filed by the participants in the proceedings. After appropriate notice public hearings were held with respect to such applications. Briefs were thereafter filed by certain of the applicants and argument before the Commission was waived.

Applications for the payment of fees and reimbursement of expenses have been filed by the following persons and in the following amounts:

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<sup>1</sup> *Electric Power & Light Corporation*. Holding Company Act Release No. 8889, March 1, 1949.

<sup>2</sup> Holding Company Act Release No. 8906, March 7, 1949.

<sup>3</sup> *Electric Power & Light Corporation, et al.* Civil Action No. 49-547, S. D. N. Y. (April 22, 1949), affirmed 176 F. 2d 687 (C. A. 2, 1949).

<sup>4</sup> 337 U. S. 903 (1949).

216a      *Findings and Opinion Regarding Fees.*

Name and Capacity	Fees	Expenses	Total
Cahill, Gordon, Zachry & Reindel Counsel for Electric.....	\$ 207,700.00	\$ 9,976.53	\$ 217,676.53
John Jirgal <sup>1</sup> Financial Consultant to Electric.....	72,000.00	19,865.51	91,865.51
Reid & Priest Tax Counsel for Electric.....	3,500.00	—	3,500.00
(R-3, 177)			
Guaranty Trust Co. of N. Y.....	60,000.00	6,210.41	
Exchange Agent under Plan.....	1,547.54	1,558.75	
	61,547.54	7,769.16	69,316.70
Reid & Priest Counsel for Bond and Share.....	70,000.00	4,350.00	74,350.00
Simpson, Thacher & Bartlett Counsel for Bond and Share on Part II of Plan.....	40,000.00	3,362.22	43,362.22
Benjamin T. Brooks Expert Witness for Bond and Share ..	700.13	—	700.13
Ralph E. Davis Expert Witness for Bond and Share..	11,250.00	1,271.19	12,521.19
Drexel & Company (Edward Hopkinson, Jr.) Financial Consultant to Bond and Share .....	100,000.00	—	100,000.00
Ebasco Services, Inc. Technical Consultant to Bond and Share .....	79,087.02	—	79,087.02
Percival E. Jackson Counsel for \$7 and \$6 Preferred Stock Committee .....	500,000.00	7,726.71	507,726.71
Israel Beckhardt <sup>2</sup> Counsel for Eva Liner, a \$7 Preferred Stockholder .....	2,000.00	—	2,000.00
Whitehorn & Cowin and } Buchman & Buchman     }			
Counsel for Two Groups of Holders of \$7 Second Preferred Stock .....	27,500.00	1,170.53	28,670.53

<sup>1</sup> Total compensation paid or proposed to be paid to Jirgal for services to Electric since April 1944 aggregates \$124,150, of which amount \$72,000 is allocated to services in connection with Section II(c) proceedings.

<sup>2</sup> Beckhardt has filed a supplemental affidavit covering services rendered his client in bringing suit against Bond and Share but leaves the matter of the value of these services to the Commission.

## Findings and Opinion Regarding Fees.

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Name and Capacity	Fees	Expenses	Total
Nathan B. Kogan, Samuel M. Koenigsberg & Victor Brudney Counsel for Sincoff Common Stockholders Committee <sup>3</sup> .....	19,000.00	2,016.75	21,016.75
Martin W. Davenport Financial Consultant to Sincoff Common Stockholders Committee .....	1,500.00	20.62	1,520.62
(R-3, 178)			
Spence, Hotchkiss, Parker & Duryee Counsel for Common Stockholders Group .....	3,000.00	—	3,000.00
Burns, Blake & Rich Counsel for Biewend-Johnson Common Stockholders Committee .....	35,975.00	2,770.06	38,745.06
P. Harold Peterson <sup>4</sup> Financial Expert for Biewend-Johnson Common Stockholders Committee ..	12,189.00	—	12,189.00
Becker, Berman & Odell <sup>4</sup> Counsel for Biewend-Johnson Common Stockholders Committee .....	5,000.00	1,049.79	6,049.79
Expenses of Biewend-Johnson Common Stockholders Committee <sup>4</sup> .....	—	7,563.10	7,563.10
Total .....	\$1,251,948.69	\$68,912.17	\$1,320,860.86

As noted below, we have approved interim allowances to certain of the applicants.<sup>5</sup>

### (R-3, 179) *History of Proceedings*

The Commission, by order dated August 22, 1942, entered pursuant to Section 11 (b) (2) of the Act, directed that the existence of Electric be terminated and that Electric and Bond and Share proceed with due diligence to

<sup>3</sup> Electric has filed an application in which it states that Messrs. Kogan, Koenigsberg and Brudney have agreed to accept \$9,500.

<sup>4</sup> The Biewend-Johnson Common Stockholders Committee has submitted a request for reimbursement of disbursements in the amount of \$16,347.47 which includes the amounts of \$2,734.58 paid to Peterson and \$5,000 paid to Becker, Berman & Odell.

<sup>5</sup> *Electric Power & Light Corporation, et al.*, Holding Company Act Release No. 10310 (December 22, 1950).

submit a plan or plans for Electric's dissolution pursuant to Section 11(b)(2) of the Act.<sup>6</sup>

At the time of the dissolution order Electric was one of five sub-holding companies in the Bond and Share holding company system. At that time Electric owned electric and gas utility subsidiaries operating in the States of Arkansas, Colorado, Idaho, Louisiana, Mississippi, Nevada, Oregon, Utah and Wyoming and also in the Republic of Mexico.<sup>7</sup> By a series of steps subsequent to our order of August 22, 1942, Electric reorganized its subsidiary companies so as to bring them toward conformity with Section 11 of the Act, and disposed of certain of those subsidiary companies which would be clearly non-retainable under the integration standards of the Act.

On November 5, 1945, Electric filed a plan pursuant to Section 11(e) of the Act, proposing a voluntary exchange of an unspecified number of shares of the common stock of United Gas Corporation ("United") for each share of Electric's \$7 and \$6 preferred stock, the exact number of shares to be offered to be fixed by subsequent amendment. On May 3, 1946 Electric filed such amendment setting forth the proposed ratios of exchange. Bond and Share disagreed with the allocation proposed by Electric and filed a plan of its own pursuant to Section 11(e) of the Act proposing a lesser number of shares of United, and providing, generally, for the creation of a new holding company to hold all the securities owned by Electric in its electric subsidiaries; the settlement of all claims asserted or which might be asserted on behalf of Electric and its past and present subsidiaries against Bond and Share; the

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<sup>6</sup> *Electric Bond and Share Company, et al.*, 11 S. E. C. 1146 (1942) affd. sub. nom. *American Power & Light Company, et al. v. S.E.C.*, 141 F. 2d 606 (C. A. 1, 1944), affd. 329 U. S. 90.

<sup>7</sup> The subsidiaries were as follows: Arkansas Power & Light Company, Dallas Power & Light Company, The Idaho Power Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service, Inc., United Gas Corporation, Utah Power & Light Company, Utah Light & Traction Company, The Western Colorado Power Company.

retirement of all outstanding preferred stocks and the second preferred stock of Electric through the exchange for shares of common stock of a new holding company to be organized and of United on a voluntary basis or by a specified cash payment; and the dissolution of Electric and the distribution of its remaining assets among the common stockholders and option warrant holders. Thereafter on July 1, 1946, a joint plan was filed by Electric and Bond and Share pursuant to Section 11(e) of the Act in substitution for the plans theretofore individually filed by the two companies. This joint plan embraced the same general (R-3, 180) features as those described above in connection with the Bond and Share plan, but prescribed different ratios of exchange and different cash payments. After public hearings, briefs and oral argument, the matter was submitted to the Commission for consideration on September 20, 1946. Although it was recognized that the sharp market break which occurred at about that time had made the plan unworkable, nonetheless, we took the plan under advisement, at the request of the Companies.

On November 26, 1947, by letter to the Commission, Electric stated that it was giving consideration to the filing of an amendment to the then existing plan or the submission of a new plan, and requested in effect that the Commission suspend consideration of the joint plan pending the submission of such amendment or new plan.

On March 24, 1948, Electric filed the plan which has since been consummated. That plan generally provided for the creation of a new holding company, Middle South Utilities, Inc. ("Middle South"), to which Electric was to transfer its holdings of the common stocks of its electric utility subsidiaries<sup>8</sup> and certain residual assets; the settlement of intercorporate claims between Electric and its subsidiaries on the one hand and Bond and Share and

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<sup>8</sup> These utility subsidiaries are Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service, Inc.



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certain of its wholly owned service company subsidiaries on the other hand based upon alleged acts of mismanagement and spoliation by Bond and Share; the retirement of the preferred stocks and the second preferred stock of Electric through the distribution to those security holders of certain designated number of shares of Middle South and of United, Electric's other major subsidiary;<sup>9</sup> and distribution of the remaining assets consisting primarily of the remaining shares of Middle South and United to the holders of the common stock and option warrants for the purchase of the common stock of Electric. (R-3, 181) At the time of filing of the 1948 plan, Electric had outstanding 514,162 shares of \$7 Preferred Stock of which 485 shares were owned by Bond and Share, and

<sup>9</sup> The allocations resulting from the plan were as follows:

<u>For Each Share of Electric Stock</u>	<u>Securities to be Received</u>
\$7 Preferred Stock.....	4.5 shares of Common Stock of Middle South Utilities, Inc. and 6.5 shares of Common Stock of United Gas Corporation
\$6 Preferred Stock.....	4.1 shares of Common Stock of Middle South Utilities, Inc. and 5.9 shares of Common Stock of United Gas Corporation
Second Preferred Stock, Series A (\$7)...	4.3 shares of Common Stock of Middle South Utilities, Inc. and 6.25 shares of Common Stock of United Gas Corporation and \$5.25 in cash
Common Stock .....	3317 shares of Common Stock of Middle South Utilities, Inc. and 1,312 shares of Common Stock of United Gas Corporation

Each option warrant was treated as if it represented one-third of a share of Common Stock. Certain cash funds were reserved for tax and other liabilities and upon satisfaction of all such liabilities, there may be a further small distribution in cash to holders of Common Stock and option warrants.

the remainder by the public, and 255,431 shares of \$6 Preferred Stock, all publicly held. Each of these stocks had a liquidation value of \$100 per share and a redemption value of \$110 per share plus accumulated and unpaid dividends. Such accumulated and unpaid dividends as of the date of filing were \$89.71 $\frac{2}{3}$  per share on the \$7 Preferred Stock and \$76.90 on the \$6 Preferred Stock aggregating respectively, \$46,128,901 on the \$7 Preferred Stock and \$19,642,413 on the \$6 Preferred Stock. Junior to the preferred stocks was an issue of 74,814 shares of the \$7 Second Preferred Stock of which 18.59% was held by Bond and Share, and the remaining 81.41% by the public. This stock was entitled to \$100 per share plus accumulated and unpaid dividends upon liquidation and \$105 per share plus accumulated and unpaid dividends upon redemption. Dividend arrearages on this stock as of March 31, 1948 were \$112 per share, aggregating \$8,379.168.

Of Electric's 3,453,787 shares of common stock outstanding, 57.23% was owned by Bond and Share and the remainder by the public. In addition, Electric had outstanding 534,754 option warrants for the purchase of the common stock of Electric. Bond and Share owned 73.57% of these warrants, the remainder being held by the public.

In the proceedings in connection with the plan, E. H. Dixon, president of Electric, testified that in the fall of 1947 Electric had worked out the outline of a compulsory plan substantially in the form of the plan as filed in 1948, but without fixing any allocation ratios. It was Dixon's view that the wide divergence of views among the various classes of security holders had tended to prolong the period between filing of a plan and its consummation. It was the further view of Electric that if substantial agreement could be reached by the various classes of security holders the possibility of expeditious consummation would be greater. Discussions were therefore held between Dixon and representative holders (R-3, 182) of the various classes of Electric's securities in order to

ascertain the views of such security holders. The record indicates that in these discussions, Electric sought to elicit the views of those who had appeared in the earlier proceedings. The plan ultimately consummated was stated to have been arrived at as the result of negotiations among representatives of the holders of various classes of securities, and the record shows that all active participants in the earlier proceedings agreed to the plan.<sup>10</sup>

After appropriate notice, public hearings were held. All those who had actively appeared in the earlier proceedings in opposition to the joint plan appeared in support of the amended plan. One Committee for the common stockholders of Electric (Johnson-Biewend Committee) appeared in opposition to all phases of the plan, submitted proposals concerning the treatment of the various classes of securities of Electric, and adduced testimony in support of its position. Another common stockholders' committee (Sincoff Committee) appeared in opposition to the proposed claims settlement embraced in Part II of the Plan. A holder of the \$7 Preferred Stock (Eva Liner) appeared, and while generally favoring the treatment proposed for the preferred stock, also objected to the claims settlement as being inadequate.

We shall discuss more fully below, in our consideration of the individual applications, the participation of each of the fee applicants in the earlier proceedings as well as in the 1948 plan proceedings.

Bond and Share has filed an application requesting that it be reimbursed by Electric in the amount of \$266,658.34 for its expenses incurred in connection with the reorganization proceedings other than with respect to those services relating exclusively to the question of claims based upon acts of mismanagement.

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<sup>10</sup> Cameron Biewend, a member of the Johnson-Biewend Committee for the Common stockholders of Electric which appeared in opposition to the plan, appeared in the earlier proceedings as a holder of the Second Preferred Stock, but appears to have taken no active part in the proceedings in that capacity.

*Applicable Standards*

In the task of simplification of utility holding company systems, the Commission is concerned with the expenses of reorganization proceeding: so that the statutory objectives may be accomplished as economically as possible, and at a minimum of expense to the estate. It is therefore a major objective of the Commission to protect estates in reorganization from exorbitant charges and at the same time grant fair compensation to those participating in the proceedings so as to afford adequate public representation in the reorganization process. Compensation may be paid for services which have contributed to the plan ultimately approved, which have contributed to the defeat of a proposed plan found to be unsatisfactory, or which have otherwise directly and materially contributed to the development of the proceedings with respect to the plan. In determining the amount of compensation to be allowed, the primary factor is the amount of benefit conferred upon the estate or its security holders by the services rendered. (R-3, 183) Among other factors to be considered are the necessity of the services, duplication of efforts, the intricacy and magnitude of the problems involved, the time necessarily required to be expended, the experience and ability of applicants, the size of the estate and its ability to pay, conflicts of interest, the extent to which the applicant's efforts were directed to or motivated by personal or special interests, and the extent to which the applicant's efforts unreasonably delayed or were detrimental to the proceedings.

In this "most thankless and delicate task in all of the problems of judicial reorganizations"<sup>11</sup> we seek to apply these criteria so as to conserve the estate for the benefit of security holders while at the same time recognizing that inadequate allowances would discourage vigorous and effective participation by representative security

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<sup>11</sup> Frank, *Epithetical Jurisprudence and The Work of the Securities & Exchange Commission in the Administration of Chapter X of the Bankruptcy Act*, 18 N. Y. U. L. Q. Rev. 317, 349-50.

interests. We base our conclusions upon experience acquired from extensive familiarity with all aspects of Section 11 proceedings as well as the work of this Commission in advising the courts with respect to fees in proceedings under Chapter X of the Bankruptcy Act.<sup>12</sup>

Among the principles applicable in bankruptcy proceedings which we believe should be considered in passing upon applications for allowances in reorganizations under Section 11(e) of the Holding Company Act is the interdiction against trading in securities. It was well established in bankruptcy, even before the enactment of Chapter X, that committee members and others in a fiduciary capacity who have transactions in securities affected by the reorganization will be barred from compensation from the estate.<sup>13</sup> What was implicit under Section 77B was made explicit in Chapter X with the enactment of Section 249.<sup>14</sup> In essence, that section prohibits compensation or reimbursement to any committee, attorney or other person acting in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has acquired or transferred (R-3, 184) a direct or indirect beneficial interest in claims against or stock of the debtor.<sup>15</sup>

<sup>12</sup> See *Finn v. Childs Co.*, 181 F. 2d 431 (C. A. 2, 1950). We observe, however, that there may be distinguishing characteristics in the two types of proceedings particularly with respect to the questions involved, the size of the estate, and the ability of the estate to pay adequate compensation for the services rendered.

<sup>13</sup> *In re Paramount Publix Corp.*, 12 F. Supp. 823, 828 (S. D. N. Y. 1935); *Aff'd* 83 F. (2d) 1015 (C. A. 2); *In re Republic Gas Corp.*, 35 F. Supp. 300 (S. D. N. Y. 1936).

<sup>14</sup> *Otis & Co. v. Insurance Bldg. Co.*, 110 F. (2d) 333 (C. A. 1, 1940); *In re Mountain States Power Co.*, 118 F. (2d) 405 (C. A. 3).

<sup>15</sup> Section 249 provides:

"Any persons seeking compensation for services rendered or reimbursement for costs and expenses incurred in a proceeding under this chapter shall file with the court a statement under oath showing the claims against, or stock of, the debtor, if any, in which a beneficial interest, direct or indirect, has been acquired or transferred by him or for his account, after the commencement of such proceeding. No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the proceedings in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has purchased or sold such claims or stock, or by whom or for whose account such claims or stock have, without the prior consent or subsequent approval of the judge, been otherwise acquired or transferred."

and was adopted by Congress upon the recommendation of this Commission in order to purge the reorganization yield of the pernicious conflicts of interest engendered as a result of trading by committee members and other fiduciaries during a reorganization proceeding.<sup>16</sup> The insuperable difficulties of determining whether inside information was actually employed, whether the particular transaction affected the judgment or loyalty of the fiduciary, and whether the damage done could be measured by the trading profits, if any, compelled the conclusion in Chapter X that a rigid and inflexible rule completely outlawing trading by fiduciaries was necessary so that "the ancient ethical standards for trustees and fiduciaries be restored in this area of finance and the whole protective committee system saved from the great disrepute into which it has fallen."<sup>17</sup>

Representatives of security holders in reorganization proceedings owe a duty of single-minded devotion free from any taint of adverse interest or desire for personal enrichment. Where there are purchases or sales of securities by those entrusted with a fiduciary responsibility, there exists the potentiality that the conduct of such fiduciary may be influenced by the desire for personal gain out of the security transactions. The reorganization process not only presents committees, attorneys and other representatives and fiduciaries, as well as the management,<sup>18</sup> with opportunities for obtaining information not generally available to the public, or at a time prior to public disclosure, but also frequently places them in the strategic position of being able to shape or influence the course of the reorganization proceeding. The subjection of public security holders to the risk that their repre-

<sup>16</sup> *Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees*, Part I, pp. 155-156, 901; Part II, pp. 315-351; Part III, pp. 132-152.

<sup>17</sup> *Ibid.*, Part II, pp. 315-316, 320-321, 340-351.

<sup>18</sup> Cf. *Federal Water Service Corporation*, 18 S. E. C. 231 (1945), affirmed S.E.C. v. *Chenery Corp.*, 332 U. S. 194, rehearing denied 332 U. S. 783.



sentatives and fiduciaries may put (R-3, 185) motives of personal profit above allegiance to the security holders or the estate must be avoided.

It is difficult to demonstrate intentional wrongdoing in such transactions. Reorganization proceedings are often protracted and determination of applications for allowances is made only after consummation of a plan of reorganization. Inquiry at such time into each purchase or sale of securities would occur many years after the particular transaction, with the difficulties attendant upon inquiry into subjective motives and intentions. Moreover, there might exist subtle influences for personal profit with consequent disadvantageous results to a class, even though the actor might himself be unaware of any improper motive. The allowance of reasonable compensation for services rendered in a reorganization "necessarily implies loyal and disinterested service."<sup>19</sup>

In order to eliminate or curtail the delays incident to a reorganization proceeding, it is customary practice for management in the Section 11 proceeding to ascertain the views of security holders and seek to reconcile the conflicting views of various classes, in order to reach agreement upon a plan. While such a compromise plan does not relieve the Commission of its statutory duty of passing on the question of fairness, the fact that it was arrived at through arm's length bargaining must be given some weight. In the course of discussions between management and representatives of security holders, management frequently submits information which is not readily available to the public and which may be used by those seeking to profit from trading in securities affected by the reorganization. There can be no assurance that such persons fairly represent their class. When such persons participate in negotiating terms of a plan, and management presents the resulting agreement as a compromise plan, it cannot be said to carry the same stamp of true arm's-

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<sup>19</sup> *Woods v. City Bank Company*, 312 U. S. 262, 268 (1941).

length bargaining. It is essential that those who are working out the problems of a company under Section 11 concern themselves solely with the interests of their class and the estate, and this is no less true of management and its counsel than of committees and their counsel and expert advisors. Otherwise there cannot be the full disclosure and free discussion essential to working out the conflicting claims of the various interests.

We have not had occasion previously to set forth our views on the effect of trading by fee applicants in Holding Company Act proceedings.<sup>20</sup> Our experience in these proceedings indicates that nearly all of those persons seeking compensation from estates in reorganization have scrupulously refrained from trading in securities affected by the reorganization. In several fee matters now before us, however, a few claimants either out of ignorance of the pertinent principles, or in reliance upon the fact that (R-3, 186) no specific rule comparable in scope to the bankruptcy rule has been promulgated or enunciated under the Holding Company Act, or resting upon supposed distinctions between Chapter X proceedings and Section 11 proceedings, have at various times acquired or transferred securities, generally in relatively inconsequential amounts.

The absence of any statutory provision under the Holding Company Act for the mandatory prohibition of compensation in the event of a trading by fiduciaries, and the further fact that we have not heretofore, by rule or decision, expressly enunciated such an absolute prohibition, except for persons associated with solicitations pursuant to Rule U-62, persuades us that it would be unjust to apply retroactively the mandate of bankruptcy practice which is codified as Section 249 unless

<sup>20</sup> As early as 1943 in passing upon applications for allowances in a Section 11(e) reorganization, we adverted to the fact that there had been no trading in securities of the companies concerned and cited as a comparable reference Section 249 of Chapter X. *North Shore Gas Company*, 13 S. E. 2 139, 142 (1943).

we can discern a misuse of inside information, an organized pattern of trading, or activity which displays a deliberate violation of ordinary fiduciary obligations. In general, those transactions which have occurred in the pending cases have been sporadic in character, do not appear to have been based upon the use of inside information, were not part of a concerted scheme to affect the course of the reorganization, some of the transactions resulted in losses, and the profits on the other transactions appear to have been relatively trivial in amount in relation both to the fees claimed and to our estimate of the reasonable compensation to be allowed for the services rendered. We have reached the conclusion that, while such trading cannot be condoned, there is not presented in these particular cases the occasion for imposing the strict rule of denial of compensation applicable in bankruptcy cases or applicable under our Rule U-62. We have, however, considered these transactions and the profits derived therefrom in reaching our determination as to the appropriate remuneration to be paid.

We turn now to a consideration of the individual fee applications and the services rendered by the applicants.

(R-3, 187)

#### SERVICES RENDERED TO ELECTRIC

*Cahill, Gordon, Zachry & Reindel*—Requested:—

Fee:	\$207,700.00
Expenses:	\$ 9,976.53

The firm of Cahill, Gordon, Zachry & Reindel, counsel for Electric in the Section 11 proceedings, has filed an application for compensation in the amount of \$207,700.00 and requests reimbursement of expenses in the amount of \$9,976.53 plus certain disbursement made in connection with the fee proceedings. The services of this firm constitute all legal services rendered to Electric with the exception of advice concerning tax matters.

The Cahill firm had previously been engaged by Electric in connection with proceedings under Section 11(b)(2) of the Act, culminating in the Commission's order directing the dissolution of Electric.<sup>21</sup> Those services were terminated in 1946 when that case was argued before the Supreme Court of the United States. Compensation for services in connection with the Section 11(b)(2) proceedings has already been paid by Electric and is not the subject of this application.

The work of the Cahill firm on the Section 11(e) plans of Electric commenced prior to the filing of the Electric Plan in November 1945, and in the main, were concluded with the affirmance of the Commission's order approving the Electric plan by the Court of Appeals on August 9, 1949.<sup>22</sup> The testimony indicates that this firm expended 6,150 $\frac{1}{4}$  hours in connection with these proceedings of which 3,403 hours are stated to be those of partners and 2,747 $\frac{1}{4}$  hours those of associates. Of the partners' time almost the entire amount is stated to be that of Daniel James. The record further indicates that lawyers in the firm were out of town on plan matters on 236 days which includes 166 days on which James was absent from the office on plan matters.

In passing on the application of the Cahill firm we have considered such matters as the skill and experience of counsel in reorganization matters, the demands made upon the time of the partners directly engaged in the matter, and the quality of the services rendered. In view of all the circumstances, and bearing in mind the high degree of skill shown in these proceedings and the successful results accomplished, we are of the view that the requested allowance is not unreasonable, and we shall, accordingly, grant the application.

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<sup>21</sup> *Electric Bond and Share Company*, 11 S. E. C. 1146 (1942), *aff'd sub nom. American Power & Light Co. v. S.E.C.*, 141 F. 2d 606 (C. A. 1, 1944), *aff'd* 329 U. S. 90.

<sup>22</sup> *Electric Power & Light Corporation*, 176 F. 2d 687 (C. A. 2, 1949).

tion warrants of Electric and the common stocks of United and Middle South. This included the receipt of old stock and warrants, verification of the certificates, the setting up of appropriate records, computation of the number of shares to which each holder was entitled, requisitioning of full share certificates, issuance of appropriate scrip certificates, assembling of stock certificates, scrip and/or checks to the holders of Electric securities, and numerous other matters in connection with the exchange of securities in accordance with the terms of the plan. The total fees requested for these services are \$61,547.54 and reimbursement of expenses in the amount of \$7,769.16.

We have reviewed the requested compensation and find the amount not unreasonable. We shall, therefore, approve its payment.<sup>26</sup>

(R-3, 191)    SERVICES RENDERED BY COMMITTEES,  
THEIR COUNSEL AND INDIVIDUAL PARTICIPANTS

*Percival E. Jackson*—Requested:—Fee:            \$500,000.00  
Expenses: \$ 7,726.71

Percival E. Jackson has requested compensation in the amount of \$500,000 and reimbursement of expenses in the amount of \$7,726.71. Jackson first appeared in these proceedings in March of 1945, at which time he represented himself and members of his family who owned 3,100 shares of the \$7 Preferred Stock of Electric. Jackson opposed the Electric and Bond and Share plans of 1946 and the joint plan of Electric and Bond and Share. Subsequent to oral argument on that plan Jackson continued to press for action towards effectuating compliance with the Commission's dissolution order. While the management has characterized certain of these efforts of Jackson as mere "needling" activities, we believe that certain of his activities had a salutary effect and contributed to the final result.

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<sup>26</sup> Since these payments have already been made, our order herein will merely provide for approval of such payments.

In 1948 Jackson became a member of and counsel for a committee for the holders of the \$7 and \$6 Preferred Stocks of Electric, and his solicitation of that class of stockholders was permitted by the Commission, pursuant to Rule U-62 of the Commission's Rules and Regulations. In the negotiations leading to formulation of the plan which was ultimately consummated, Jackson and Curtis E. Calder, Chairman of the Board of Bond and Share, became the two principal protagonists respectively for the first preferred stocks and the common stock. The importance of Jackson's agreement to any plan is evidenced by the fact that Calder would not agree to any plan unless the agreement of Jackson was obtained.

Associated with Jackson in the earlier phase of the proceedings were his office associates, Theodore N. Tarlau and Joseph J. Bryer. In the proceedings which commenced in 1948 Bernard S. Kanton was associated with Jackson as associate counsel to the Committee. At the hearings on the 1948 plan the Committee was represented primarily by Kanton although his work was subject to the supervision of Jackson.

No evidence was adduced by the Committee in support of its position since they rested upon the testimony adduced by the company. Jackson and his associates filed briefs before the Commission, the District Court and the Court of Appeals and Jackson argued before the Commission and the District Court, as well as before the Court of Appeals in connection with the application for a stay made by the Common Stockholders Committee.

In evaluating the services of Jackson we have considered his long experience at the bar and his particular skill in reorganization matters. We cannot accept the position of Electric that the services of Jackson rendered prior to 1948 were not worthy of compensation. While his opposition cannot be regarded as a motivating reason for the failure of the 1946 plan, it is none the less the fact that he opposed a plan which (R-3, 192) ultimately failed and



mittee had owned all classes of the securities of Electric, as set forth in their declaration, had disposed of securities other than the common stock, and had acquired the common stock in the period immediately preceding the filing of their declaration. Johnson had not theretofore appeared in the Electric proceedings although Biewend had appeared *pro se* in the earlier 1946 proceedings as a holder of the second preferred stock of Electric. In the course of negotiations leading to the formulation of the 1948 plan both Johnson and Biewend had been consulted by Dixon and both had indicated their disagreement with the management of Electric.

In the proceedings on the plan the Johnson-Biewend Committee opposed the allocations contained in the plan and adduced independent evidence through its expert, P. Harold Peterson, and its Chairman, Johnson, in support of the Committee's proposals that the \$7 Preferred Stock of Electric should be retired through the exchange of 5.35 shares of Middle South stock and \$4.35 in cash. These proposals were predicated upon earnings estimates made by Peterson which contained numerous fallacies as pointed out in the Commission's opinion. The earnings estimates prepared by Peterson assumed earnings for a five-year period and took the average of those earnings as the foreseeable earnings of Electric. In reaching his earnings figures Peterson assumed the use of retained earnings capitalized for the purpose of supplying further earnings, thereby arriving at an earnings estimate far in excess of that submitted by the company's witnesses and adopted (R-3, 195) by the Commission. In addition Johnson then assumed capitalization factors on such future assumed earnings of 12 and 13 times as compared with the Commission's adoption of approximately 10 times earnings. The Commission reached the conclusion that the Committee's earnings estimates and allocations were neither suitable nor appropriate for testing the fairness of the plan and accordingly rejected them. While we do not

believe that market history subsequent to the consummation of a plan constitutes a reliable device for the testing of a plan's fairness, none the less it is significant that the allocation proposals made by the Johnson-Biewend Committee would have resulted in the \$7 Preferred Stock receiving securities and cash of a present value of between \$85 and \$95 in full compensation for their liquidation preference of \$189 and the redemption price of \$199. Similarly, the preferred stocks' participation in the entire enterprise would have amounted to approximately 18% and the common stock's participation approximately 82% as compared with the allocation found fair by the Commission which gave the preferred stocks approximately 60% of the enterprise and the common stock and option warrants approximately 40% of the enterprise.

In the administrative stage of the proceedings the Committee paid only passing attention to the question of whether the proposed settlement of claims based upon mismanagement was adequate. After the rejection of the Committee's contentions with respect to the fairness of allocation, the Committee gradually changed its position in the courts so that upon the final argument of the case in the Court of Appeals major reliance was placed upon the question of adequacy of the "Deep Rock" settlement. The Committee did not in the administrative stage of the proceedings aid in any manner or develop the record in any wise with respect to the question of liability of Bond and Share for acts committed by it during the period of its stewardship of Electric.

In this case the interests of Electric's common stockholders had been initially represented by Bond and Share, and while the amended plan as agreed to by Bond and Share was ultimately found to be fair and equitable, *inter alia*, to the publicly-held common stock of Electric, we recognize that Bond and Share's separate interest in the problem of subordination, the so-called "Deep Rock" issue, made it desirable to have completely independent

representation of the public common stockholders of Electric. As appears below, two independent committees appeared at substantially the same time and pursued somewhat differing approaches in their activities on behalf of the public common stockholders. Since neither of these committees was successful, we believe that any compensation to either committee not only must depend on whether the committee functioned efficiently, and properly and diligently represented the interest of its class, but also must reflect the consideration that the aggregate compensation for independent representation, not resulting in any tangible benefit to the class, must be modest.

The Johnson-Biewend Committee, its counsel and expert seek in the aggregate \$64,546.95 for compensation and reimbursement of expenses as follows:

(R-3, 196)	Fee	Expenses
Burns, Blake & Rich, Counsel. . . .	\$35,975.00	\$2,770.06
Expenses and Disbursements of the Committee. (This includes \$5,000 paid to Becker, Berman & Odell as a fee and \$1,049.79 for expenses and \$2,734.58 paid to P. Harold Peterson on account)		16,347.47
Additional Compensation to P. Harold Peterson . . . . .	\$ 9,454.42	

<i>Burns, Blake &amp; Rich</i> Requested:	Fee	\$35,975
	Expenses	\$ 2,770.06

The firm of Burns, Blake & Rich appeared in these proceedings as counsel for the Johnson-Biewend Committee. The greater part of the services for which compensation is sought was performed by John F. Rich, Jr., a partner of the firm. The application states that the firm expended a total of 1,798¾ hours on this matter, of which 150 hours were those of John J. Burns, senior partner in the firm.

The services of Burns, Blake & Rich may be summarized as follows: They first appeared in connection with the filing of a declaration by the Committee under Rule U-62. Rich appeared at all the hearings before the Commission in 1948 and participated in cross-examination of the company witnesses. The firm submitted a brief and reply brief before the Commission and Rich argued the matter orally before the Commission. The firm participated in the briefs before the District Court and the Court of Appeals although primary responsibility for the court phase of the litigation seems to have rested upon the firm of Becker, Berman & Odell whose services we shall discuss below. From the time that Burns, Blake & Rich entered the case, namely April 5, 1948, to the oral argument on the case, the firm expended approximately 1,000 hours and from that time to the close of the case expended in addition approximately 800 hours.

The application and brief of Burns, Blake & Rich concede in effect that compensation to it must rest upon services rendered by reason of their being an active committee rather than by reason of any important benefits achieved through their representation. As we have previously stated, every contention of the Committee was completely rejected by the Commission and by the Courts. Electric has recommended payment of a fee to the firm of Burns, Blake & Rich in the amount of \$9,500 and reimbursement of their expenses. We believe this is appropriate compensation in the light of the failure to achieve any substantive results, bearing in mind the size of the estate and the complexity of the problems involved. Our allowance cannot be based upon the number of recorded hours of time attributed by counsel to the case. Efforts productive of significant results may occupy only a few hours, while on the other hand many days may be spent to no avail. We can charge the estate only for the measure of benefit conferred upon it. In our opinion, the allowance (R-3, 197) indicated is fair compensation for the services performed in this

case. We shall also allow reimbursement of their expenses in the amount sought.

*P. Harold Peterson*—Fee Requested: \$12,189

P. Harold Peterson was retained as a financial expert by the Johnson-Biewend Committee. Peterson advised the committee and testified before the Commission as to the estimated future earnings of Middle South and United. As we have previously indicated, the contentions advanced by Peterson were completely rejected by us and our opinion pointed out certain fundamental errors in Peterson's analysis. The application states that Peterson devoted a great deal of time to the preparation of exhibits, projections of earnings, analyses of the company's plan and allocation of securities based on his assumed price earnings ratios and his own earnings estimates. It is further stated that Peterson's testimony was based on extensive study of the power, natural gas and oil industries and that this work covered the greater portion of the 717 hours expended by him while in the proceedings.

Cross examination of Peterson revealed that he had not previously made any studies similar to those made for the Electric proceedings. Further, a large part of his work consisted of the manual task of copying figures from exhibits already in the testimony. Peterson stated that he did all of the work himself including the copying and computations and that he had no one to assist him because of the confidential nature of the work. Further, his exhibits revealed basic errors in analysis such as the double use made of retained earnings, as pointed out in our Findings and Opinion. The unrealistic projections of earnings and the fundamental fallacies of analysis contained in the Peterson exhibits and testimony caused us to completely reject that testimony.

The record indicates that the analyses and testimony of Peterson did not in any way aid the Commission, and that such services were not essential or even useful to the

protection of the interests of the common stockholders. While we believe it proper that a Committee avail itself of the services of an independent expert, it is also our view that the estate should not be saddled with the payment of any fee for computations which, however complex, are based upon fallacious analytical foundations. In considering the allowance of a fee, we cannot be influenced by the fact that payment may already have been advanced and that the claim is for reimbursement, since otherwise our jurisdiction could be circumvented. Accordingly, we shall deny reimbursement of the amount already paid Peterson and also deny the request for further compensation.

*Expenses and Disbursements of the Johnson-Biewend Committee—\$16,347.47*

The Johnson-Biewend Committee seeks reimbursement in the amount of \$16,347.47 for expenses incurred in connection with the plan proceedings. This includes the amount of \$2,734.58 paid to Peterson which we have already discussed. The remaining expenses include costs of postage, traveling expenses, cost of stenographers' minutes, and printing expenses. In addition there is included the amount of \$5,000 paid to the firm of Becker, Berman & Odell for legal services in connection with the court phases of the proceedings and expenses of that firm in the amount (R-3, 198) of \$1,049.79.

The stated justification for retention of the firm of Becker, Berman & Odell, in addition to the firm of Burns, Blake & Rich was the desire to have New York counsel in the court phase of the proceedings. In view of the fact that the firm of Burns, Blake & Rich maintains a law office in New York and that the senior partner of that firm, as well as certain other members, are members of the New York bar, there seems to be little justification for retaining additional counsel. The retention of additional counsel after the conclusion of the administrative proceedings necessarily entailed a great deal of duplicative work for which we do not believe the estate can properly be charged.



Since we have previously granted an interim allowance to the Cahill firm in the amount requested, our approval herein will conclude the matter without any further payment to be made by Electric.

(R-3, 188) *John Jirgal*—Requested:—

Fee: \$72,000.00<sup>23</sup>

Expenses: \$19,865.51

John Jirgal was engaged by Electric in April, 1944 to assist the officers and directors of that company with financial problems in general, and particularly those which might be related to its dissolution or reorganization. Prior to being engaged by Electric, Jirgal had had extensive experience in the public utility field but had not been engaged in any way by any of the Bond and Share companies. This complete disassociation from the Bond and Share system is stated to have been one of the reasons for Jirgal's employment.

Jirgal does not maintain a staff, and as a matter of policy restricts his services to a very few clients each year. His services were supplemented by work of the staff of Electric, and in addition through the use of an accountant for which he has been reimbursed, the expenses of which constitute part of the expenses here shown.

From April, 1944 until November, 1945, Jirgal's activities consisted of a comprehensive investigation of all phases of Electric's activities including the financial problems of each of its subsidiaries. During this period Jirgal advised Electric on the financial problems relating to retirement of its debentures and the disposition of certain of its interests in clearly non-retainable companies. Of the total remuneration claimed for the entire period of his services, Jirgal allocates \$52,150 to the period up to November, 1945 and \$72,000 for the period from November,

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<sup>23</sup> Total compensation proposed to be paid Jirgal for services to Electric since April 1944 aggregates \$124,150 of which amount \$72,000 is allocated to services rendered in connection with Section 11(c) proceedings of Electric.

1945 to June, 1949. We consider here only the services relating to the latter period, although the allocation as between plan services and general consulting services is necessarily an arbitrary one. However, since the rate of compensation over the entire period is approximately the same we have no difficulty with the allocation. During that latter period Jirgal devoted 320 days to the Electric matters of which 230 days were spent away from his office. For the entire period, the requested remuneration amounts to compensation at an average rate of \$25,000 per year.

In connection with plan proceedings, Jirgal's work consisted of advising on plans of dissolution in connection with which he states that from 15 to 20 different plans were brought to his attention in the 3½ year period.

In connection with the first plan of Electric, filed November 5, 1945, Jirgal spent a considerable amount of time in preparation of the plan and in attendance at board meetings. Further, he suggested to the board the exchange ratios which were adopted and advised the board as to their reasonableness.

With respect to the joint plan filed by Bond and Share and Electric in July, 1946, Jirgal states that that plan was negotiated between representatives of the two companies and that he did not participate directly in (R-3, 189) those negotiations. The joint plan, it should be noted, provided for the exchange of ten shares of the stock of United for each share of the \$7 Preferred Stock, whereas, the earlier plan provided for 11 shares of United for each share of preferred stock.

In the period between argument on the 1946 joint plan, and submission of the 1948 plan, Jirgal participated actively in all discussions with the management leading to its conclusion that the most desirable type of plan would be a compulsory one, wherein the holders of Electric securities would be given shares of both United and Middle South. Thereafter, extensive conferences took place with various classes of security holders in order to arrive at an

agreed upon plan. Negotiations took place in February and March of 1948 between representatives of the preferred stocks, on the one hand, and Bond and Share, on the other, at which Jirgal and representatives of Electric sat in, primarily as observers and suppliers of facts. Agreement was reached between Bond and Share and certain of the Preferred Stock representatives whereby a new preference common stock of United would be created and the holders of the \$7 Preferred Stock would be given 5.5 shares of the United preference stock and 4.5 shares of the Middle South stock. This proposal was objected to by Jackson, counsel for the preferred stock group, and Electric and Jirgal also concluded that it was not a desirable solution of the dissolution problem.

Thereafter, Jirgal conducted negotiations with representatives of the preferred stocks looking towards translation of the agreed upon ratios of United preference common into an equivalent amount of United common resulting in the ratios which were ultimately reflected in the plan and approved by the Commission.

Jirgal's application states that the ratios agreed upon were substantially those which he had recommended to Dixon as being appropriate and fair and equitable. This statement is buttressed by the consistent position of Jirgal that 11 shares of United was proper compensation to the \$7 Preferred Stock and his view that for purpose of valuation the stock of Middle South should be regarded as being of the same value as stock of United.

In addition to advice and participation in the negotiations Jirgal testified in both the 1946 and 1948 proceedings, and his testimony with respect to the fairness of the allocations was substantially adopted by the Commission in reaching its conclusion that the plan was fair and equitable.

We are of the view that Jirgal's services in this matter were outstanding and that he contributed in a high degree to the formulation and promulgation of a successful plan of reorganization. We, therefore, approve the re-

requested payment in the amount of \$124,150 for the entire period which includes the amount of \$72,000 allocated to services during the pendency of the various plans, and reimbursement of expenses in the amount of \$19,865.51. Since these amounts have already been paid, our order herein will approve such payments, but will not authorize any further payments.

(R-3, 190) *Reid & Priest*—Requested:—Fee \$3,500.

The firm of Reid & Priest was engaged by Electric to give advice with respect to the tax consequences arising out of consummation of the plan. The fee requested for these services is \$3,500. It will be noted that Reid & Priest was also counsel for Bond and Share in these proceedings and requests a fee of \$70,000 for services rendered to Bond and Share.<sup>24</sup> In view of the fact that the services for which compensation is here sought were rendered when there was no disagreement between Bond and Share and Electric and the further fact that the services were of what might be called a technical and non-controversial nature, we do not believe that there was any antagonistic relationship. We are of the view further that the services were appropriate and the compensation sought is not unreasonable. We shall, therefore, grant the application of Reid & Priest in the amount of \$3,500 for these services.

*Guaranty Trust Company of New York*—Requested:—

Fee:	\$61,547.54
Expenses:	\$ 7,769.16

Guaranty Trust Company of New York ("Guaranty") was engaged by Electric as Exchange Agent under the plan.<sup>25</sup> Their services had to do with the exchange of three classes of preferred stocks, the common stock and the op-

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<sup>24</sup> We shall consider below Reid & Priest's application for compensation from Bond and Share for services rendered to that company.

<sup>25</sup> The record does not disclose that competitive conditions were maintained in the selection of the exchange agent. See *Ohio Edison Company, Holding Company Act Release No. 9771* (March 29, 1950).

that in the plan ultimately consummated the class which he represented enjoyed a greater participation in the estate than they would have under the earlier plan.

In assaying the services of Jackson we must also consider the fact that as the representative of the Preferred Stock in the earlier proceedings his consent to a plan was deemed essential to those whose agreement was necessary if the aim of eliminating opposition were to be realized. It is clear that this position stemmed from Jackson's participation in the 1946 proceedings. Further, we must consider the fact that Jackson's efforts contributed to the rejection of a plan which would have imposed a preference common stock on United and the substitution of provisions whereby the participation of the preferred stock was increased somewhat.

We have also considered Jackson's services relating to the litigation phase of the proceedings. We particularly note in this connection the effective argument made by Jackson in the District Court, although we cannot accept his contention that he alone was responsible for clarifying the situation before the Court with respect to the treatment of the "Deep Rock" questions. We also note as a factor the brief but effective argument made before the Court of Appeals on the application for a stay filed by the Common Stockholders Committees, which application was denied by that Court and the Supreme Court.

We see no basis for allowing a fee of the magnitude which Jackson claims.<sup>27</sup> We recognize that as a committee representative, and unlike company counsel whose compensation is assured, Jackson's right to compensation is dependent in large part upon the results achieved. While we recognize Jackson's positive contributions, we do not believe his request of \$500,000 is justified.

Jackson's office keeps no precise time records but on the basis of computations made by his associate, Bryer,

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<sup>27</sup> Electric has recommended a fee to Jackson in the amount of \$75,000 to \$100,000.

he estimates that his office devoted a minimum of 3,500 hours to this matter, approximately one half of which was Jackson's own time. Kanton, who kept a careful time record, estimated his time at more than 800 hours. Jackson believes that an accurate appraisal would result in a conclusion that his organization had spent 5,000 hours on this matter.

We believe that compensation in the amount of \$140,000 represents proper compensation to Jackson under all the circumstances of this case, which compensation includes, of course, remuneration to Jackson's office associates as well as Kanton. We shall therefore grant the application to the extent of \$140,000 and reimbursement of disbursements, and deny the application in so far as it exceeds the amount herein granted.<sup>28</sup>

(R-3, 193) *C. Perry King*—Requested:—Fee: \$5,000

C. Perry King was a member of the \$7 and \$6 Preferred Stock Committee of Electric from the time of its formation in December 1947 to the time of its dissolution in July 1949. King's affidavit sets forth that he devoted considerable time and service to preparing investment worth analyses, that he was consulted by Jackson as to tax problems in connection with the plan, that he had analyzed various factors in the case from time to time, and that he was called upon frequently to advise preferred stockholders with respect to the aims and purposes of the Committee. King has no estimate of the time devoted to this matter but states that he expended 100 hours with respect to accounting matters in connection with various phases of the various plans.

We believe that the amount of \$2,000 represents adequate compensation to King for services rendered in connection with these proceedings. Accordingly, an order will provide that the application be granted to this extent and denied in so far as it exceeds \$2,000.

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<sup>28</sup> Our interim order permitted payment to Jackson in the amount of \$100,000.



*Buchman and Buchman*

and

—Requested:—Fee:      \$27,500.00

*Whitehorn & Cowin*

Expenses \$ 1,170.53

These two firms separately represented individual groups of holders of the \$7 second preferred stock of Electric and participated separately in the course of the proceedings. Buchman represented his sister who owned 2,550 shares of the second preferred stock. Whitehorn & Cowin represented the holders of 685 shares of such stock.

Whitehorn & Cowin first appeared in the proceedings in February 1946 when they filed proposals which they designated as a plan on behalf of the second preferred stock and continued in the proceedings until May 16, 1949, when the Supreme Court denied the application of the common stockholders committee for an order staying consummation of the plan. From February 1946 until August 1946 Whitehorn & Cowin were the only representatives of the second preferred stock. From August 1946 until consummation of the plan both firms participated independently in the proceedings. Both firms participated independently in the examination of the witnesses, and both firms on behalf of their clients agreed upon the allocations to the second preferred stock which were set forth in the Amended Plan of 1948. Both firms prepared briefs and argued orally before the Commission and participated in the proceedings before the District Court. Both firms submitted briefs in the proceedings urging that the plan be modified so as to compensate the second preferred stock for any delay occasioned in the consummation of the plan. It is impossible, of course, to ascribe credit to any individual for formulation of the amendment which resulted in the second preferred stock's being compensated at the dividend rate from July 1, 1948 to the last full quarter preceding consummation of the plan. It is noteworthy, however, that the questioning which gave rise

to this amendment originated upon cross-examination of Dixon by counsel for the Division of Public Utilities of the Commission. In view of this we cannot ascribe these results entirely to the efforts of the representatives of the second preferred stock.

(R-3, 194) We are of the view that the services of these firms were helpful in the proceedings in affording representation to this particular class of security holders and in agreeing upon ratios of exchange for the second preferred stock. By reason of the fact that the two firms represented separate individuals it was inevitable that there was some duplication in their efforts. In order to avoid allowance for duplicate services, we have considered the services of both counsel as though they were associated. We note that the firm of Whitehorn & Cowin devoted 750 hours to this matter mainly through Victor Whitehorn, and the firm of Buchman and Buchman, mainly through Abraham M. Buchman, devoted 738 hours to these proceedings. Electric has recommended a combined fee for both firms in the amount of \$27,500 to be equally divided between them. We, of course are not bound by any such recommendation. We believe that aggregate compensation for these services in the amount of \$22,500 to be equally divided between the two firms represents appropriate compensation for the services rendered and our order will so provide. Our order will also provide for reimbursement of expenses in the amount claimed.

*Applications on Account of Services Rendered on Behalf  
of the Johnson-Biewend Committee*

The Johnson-Biewend Committee for the Common Stockholders of Electric ("the Johnson-Biewend Committee") was organized in April 1948 by Christian A. Johnson and Cameron Biewend, and filed a declaration which became effective under Rule U-62 of the Rules and Regulations promulgated under the Holding Company Act. Both Johnson and Biewend prior to the creation of the com-

We shall accordingly deny reimbursement of expenses to the Committee for the amount paid to Becker, Berman & Odell for fees, but shall allow reimbursement for costs of printing briefs (\$675.78) and for miscellaneous costs (\$374.01).

We shall approve reimbursement of the remaining expenses of the Committee in the amount of \$8,612.89, which includes expenses of the Becker firm, and will deny the application for reimbursement in the amount of \$7,734.58.

<i>Nathan B. Kogan—</i>	Fee Requested	\$9,500 <sup>29</sup>
<i>Samuel M. Koenigsberg</i>	Expenses	2,016.75
<i>W. Victor Brudney</i>		

Nathan B. Kogan served as counsel to a committee for the common stockholders of Electric referred to in the proceedings as the Sincoff Committee. Associated with Kogan was Samuel M. Koenigsberg, who during part of the time was in the office of Kogan, and W. Victor Brudney, who was associated with the firm of Becker, Berman & Odell. The Sincoff Committee filed a declaration pursuant to Rule U-62, which declaration became effective permitting the Committee to solicit the common stockholders of Electric. Such solicitation in fact never took place for the stated reason that since the Johnson-Biewend Committee was soliciting the common stockholders of Electric, there was no need for setting up competing committees. While there was no agreement between the Johnson-Biewend Committee and the Sincoff Committee as to their respective zones of operation, there developed, during the administrative stages of the hearing at least, a clearly defined line of demarcation. The Johnson-Biewend Committee opposed primarily the allocation ratios proposed in the plan and attacked the earnings estimates submitted by Electric and its subsidiaries. That Committee paid only

<sup>29</sup> Initially, application was made in the amount of \$19,000, but that application was modified as a result of agreement with Electric to the amount of \$9,500.

scant attention during the administrative phase of the hearings to the "Deep Rock" aspects of the case. The Sincoff Committee did not take issue with analytical basis for the allocation but limited their activities to the proposed settlement of claims by and on behalf of Electric and its subsidiaries and former subsidiaries against Bond and Share and certain of its subsidiaries based upon alleged mismanagement.

(R-3, 199) During the hearings the Sincoff Committee was represented primarily by Koenigsberg who participated only in the cross examination of those witnesses whose testimony dealt with the claims settlement. The Committee submitted an extensive brief analyzing the transactions between Bond and Share and its subsidiaries and Electric and its subsidiaries upon which the claims settlement was predicated. Our Findings and Opinion thoroughly reviewed the contentions made by the Sincoff Committee and gave effect to certain of the contentions although we did not increase the amount of the settlement.

In the court proceedings Koenigsberg argued before the District Judge again limiting the argument to the "Deep Rock" aspects of the case and urged that modification of the settlement need not result in delay since that aspect of the case could be separated from the allocation aspects of the case. The Commission took the position that all aspects of the case were inseparable and that the claims settlement was an integral aspect of the overall allocations which position was upheld by the Court of Appeals.<sup>30</sup>

The Committee urges that while they can claim no success in their efforts to have the settlement declared inadequate that nonetheless they performed a necessary and useful function in the proceedings and did so with skill and ability. The application states that counsel expended a total of 1,065¾ hours on this matter of which 156 hours were those of Kogan, 445¾ hours those of Koenigsberg, and 464 hours those of Brudney. We are of the view that

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<sup>30</sup> *In re Electric Power & Light Corporation*, 176 F. 2d 687 (C. A. 2, 1949).

\$9,500 is fair compensation for the services rendered and shall grant the application. We shall also allow reimbursement of disbursements in the amount of \$2,016.75.

*Martin W. Davenport*— Fee Requested    \$1,500  
    Expenses                    20.62

Martin W. Davenport, a financial analyst, was retained by the Sincoff Committee to advise them with respect to the merits of the Electric plan. Davenport devoted approximately 175 hours to this matter and seeks compensation in the amount of \$1,500.

Davenport's services consisted essentially of analysis of amounts paid by the subsidiaries of Electric for services rendered by wholly owned subsidiaries of Bond and Share. The work of Davenport constituted the factual foundation, in some degree, for the arguments made by the Sincoff Committee for a larger payment by Bond and Share in settlement of claims based upon mismanagement and spoliation. As we have previously indicated, settlement of these claims for the amount of \$2,200,000 was approved by us as part of the overall plan and affirmed by the courts on the basis that it was an integral part of the entire Section 11(e) plan. Despite the fact that the Committee's views did not prevail, we conclude that Davenport, whose analysis was competent and helpful to the work of the Committee, should be paid the amount of \$1,000 for his services since these services were proper in carrying out the activities of the Sincoff Committee and since the Commission recognized that certain of the contentions were meritorious. We shall also allow reimbursement of expenses in the amount of \$20.62.

(R-3, 200) *Israel Beckhardt*—Fee Requested \$2,000<sup>31</sup>

Israel Beckhardt appeared in these proceedings in behalf of Eva Liner, the owner of fifty shares of the \$7

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<sup>31</sup> Beckhardt also requests further compensation in such amount as the Commission may deem appropriate.

Preferred Stock of Electric. Beckhardt's participation in these proceedings was limited to attacking the claims settlement as inadequate. He did not take any issue with respect to the propriety of the allocations to the \$7 Preferred Stock. In fact he admitted that he thought such allocations were fair. Beckhardt's claim for compensation here, in addition to services rendered directly in connection with the claims settlement, also relates to services rendered in proceedings affecting National Power & Light Company ("National"). In that case National proposed a settlement of the claims for mismanagement by Bond and Share in the amount of \$525,000. After hearings on the matter and at the suggestion of the staff, that settlement was increased to the amount of \$750,000. Beckhardt claimed that he was largely responsible for the increased amount of the settlement and sought compensation from National in the amount of \$75,000. The Commission, after hearing, awarded Beckhardt the amount of \$2,000 for his services.<sup>32</sup> Beckhardt urges that the formula followed in the National settlement was followed in the settlement arrived at between Electric and Bond and Share and that by reason of the increase in the National settlement, the amount of the Electric settlement was increased by the sum of \$250,000 or \$300,000. It is his position that since the National settlement was increased by reason of his efforts and the Commission recognized this by awarding compensation in the amount of \$2,000 to him, he is, therefore, entitled to compensation in like amount in these proceedings. Since Beckhardt has received payment for his services in the National case, he cannot obtain further payment for such services, or for the application of a theory which he claims to have discovered to the context of another proceeding. Certainly no vested interest attaches to a legal theory. Any com-

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<sup>32</sup> *National Power & Light Co., Holding Company Act Release No. 7982* (February 27, 1948) approved and enforced 80 F. Supp. 795 (S. D. N. Y. 1949).



pensation in this matter must rest upon services rendered in this proceeding. None were rendered, and we must therefore deny this application.

For these reasons, both applications of Beckhardt are denied.

*Spence, Hotchkiss, Parker & Duryea—Fee Requested  
3,000*

The firm of Spence, Hotchkiss, Parker & Duryea first appeared in these proceedings after the Commission had approved the Electric plan, as amended, and had made application to the District Court of the United States for an order approving and enforcing that plan. This firm represented two individual stockholders of Electric who had organized a group of Electric stockholders owning 95,750 shares of the Electric common stock. That group had also received requests from holders of 64,100 shares of the common stock of Electric that their views be presented to the court.

The position of this common stock group was anti-thetical to that (R-3, 201) of the common stock committees heretofore discussed. It was their position, which they presented to the court, that the plan was fair to the common stockholders and it was their belief that the court should be informed that substantial numbers of the holders of the common stock felt that the best interests of their class would be served by expeditious consummation of the plan. This group, coming into the proceedings at the late date it did, contributed nothing to the record or to the administrative proceedings. In our opinion they did not contribute to the disposition of the case by the court.

While the claim of Spence, Hotchkiss, Parker & Duryea in the amount of \$3,000 is extremely modest, we nonetheless must deny their application since upon careful review of the record, we find that they did not contribute in any wise to the formulation or carrying out of a successful plan of reorganization.

**SERVICES RENDERED TO BOND AND SHARE.**

In considering the following applications for compensation, we shall consider first the question of whether Bond and Share may, as it claims, obtain reimbursement from Electric for such expenditures as it has made and may be called upon to make in connection with the Section 11(e) proceedings of Electric.

Bond and Share does not contest the jurisdiction of the Commission to pass upon the determination of what amounts are payable by it for services rendered in connection with the Electric proceedings. Electric has not taken any position with respect to the reasonableness of such fees since it resists the claim of Bond and Share for reimbursement. Since the Electric proceedings constitute only one phase of the entire proceedings involving the simplification of the Bond and Share system, our statutory duty to supervise the expenses of reorganization would be in part defeated if we did not pass upon the expenses of the top holding company in the system in the course of passing upon reorganizations of its subsidiary holding companies. Any other course might result in such dissipation of the assets of the top holding company as to defeat in part the purposes of the statute.

*The Bond and Share Claim-Over*

Bond and Share seeks reimbursement from Electric for the fees and expenses of Reid & Priest, one of the counsel retained by it, of Drexel & Co., one of the partners of which, Edward Hopkinson, was financial consultant to Bond and Share, of Ebasco Services, Incorporated, and for certain other services, relatively minor in nature. Electric opposes payment of these fees on the grounds that (1) the claims settlement embraced in Part II of the Plan disposed of all claims between Electric and Bond and Share, (2) Bond and Share as a holding company had a primary duty, as a step toward its own compliance

with the Act, to present an appropriate plan for Electric, and (3) Bond and Share occupied a unique position in which it was difficult to differentiate between services rendered to it as a common stockholder and those rendered to it in its various other capacities.

(R-3, 202) Bond and Share does not seek reimbursement with respect to the fee and expenses of Simpson Thacher & Bartlett, its counsel with respect to those matters relating to the assertion and settlement of claims against Bond and Share and its subsidiaries based on the "Deep Rock" doctrine.

We have considered the various contentions, and, for the reasons set forth below, conclude that Bond and Share may not be reimbursed for any of the fees and expenses payable by it in connection with the Electric proceedings.

*1. Bond and Share's Role in Section 11 Proceedings of Electric.*

The proceedings culminating in the dissolution order directed to Electric were part of the overall proceedings to bring Bond and Share into compliance with the Act. The statute directed that curative action under Section 11 be such as to bring the holding company system into compliance with the Act, and that the holding company and each subsidiary company take "such action as the Commission shall find necessary". The Commission found that Electric constituted an undue and unnecessary complexity in the Bond and Share system in contravention of the standards of Section 11(b)(2).<sup>33</sup> The Commission found in the Electric dissolution proceedings that Electric was a mere set of books in the Bond and Share office; that Bond and Share had created Electric; and that Bond and Share was responsible for all the activities of Electric. Accordingly, the Commission directed Bond and Share to "proceed with due diligence to submit to this Com-

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<sup>33</sup> *Electric Bond and Share Company, et al*, 11 S. E. C. 1146, 1208 (1942).

mission a plan or plans for the effectuation of this order, and shall take such other and further steps as may be necessary or appropriate to effectuate this order." Bond and Share was not a mere volunteer seeking to protect its own investment. Its services in the proceedings had at all times the dual aspect of seeking to obtain as much for its interest in Electric as was possible and at the same time of correlating any plan for the reorganization of Electric with its own plans for compliance with the Act. In a broad sense it may be said that Bond and Share's services in these proceedings were not services merely designated to bring Electric into compliance with the Commission's order but were additionally, if not primarily, steps designed to simplify the Bond and Share system and Bond and Share itself at the apex of that system.

It is, of course, clear that Bond and Share could not hope to resolve its own problems under the Act without resolving the problems of its subsidiaries. In fact, the entire program for compliance of Bond and Share with Section 11 of the Act, first set forth in 1945, was and has been postulated upon the reorganization of Electric and the other subholding companies in the Bond and Share system. Any plan for the compliance of the subholding companies must necessarily have been as a step toward the ultimate resolution of Bond and Share's overall Section 11 problems which were its primary concern.

Bond and Share had an interest in the reorganization of Electric in order to carry out its own program of compliance with the Act, including compliance with the statutory duty imposed upon it to present a plan for the dissolution of Electric. To permit payment by Electric to Bond and (R-3, 203) Share for services of Bond and Share in carrying out its program of compliance with Section 11 of the Act would be to shift the burden of Bond and Share's necessary corporate expenses to the public stockholders of Electric, and would, therefore constitute an element of unfairness and could not be approved.

2. *Services Rendered in Connection with "Deep Rock" Aspects Were Inseparable from Other Services Rendered*

As we have previously noted, Bond and Share does not seek reimbursement from the estate of Electric for services rendered in connection with the settlement of claims asserted by or on behalf of Electric and its subsidiaries against Bond and Share and certain of its wholly owned subsidiaries. This is in recognition of the fact that these services, relating to the defense of charges that wrongful acts were committed by Bond and Share against Electric, are not compensable from the estate of Electric. These services, however, dealt with a matter which was an integral part of the overall reorganization process. We passed on these claims only in the context of a Section 11(e) overall plan for compliance. While the claims against Bond and Share comprised an element which had to be weighed in considering the fairness of the plan, its weight was significant only in its relation to all the provisions of the plan, and the fairness of the Bond and Share settlement proposal was justified only on the basis of all the terms of the plan.<sup>34</sup> The Commission cannot separate services rendered in connection with "Deep Rock" matters as distinct from other plan services. The settlement of claims based on wrongful conduct permeates the entire case because of the interrelationship of all parts of a Section 11(e) plan; and while services rendered on a particular aspect of a case may be separated, their value exists only in the light of the overall plan.

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<sup>34</sup> In approving the claims settlement in the Electric case, the Commission held (Holding Company Act Release No. 8889 at page 90):

"As previously noted, in determining whether the proposed settlement is fair, we are not required to fix precise dollar valuations for any particular claim. Our obligation is satisfied when we determine whether, considering all the circumstances in the case, the proposed settlement accords sufficient weight to the equities of the interests affected that it may be said to fall within the range of fair treatment to such interests."

### 3. *Adverse Interests of Bond and Share*

It is a fundamental principle that one seeking compensation from the estate for services rendered in reorganization proceedings be unburdened by any duality of interests and must not have conflicting interests.<sup>35</sup> It is not necessary that there be any actual showing of misconduct. The existence of circumstances which might prevent unswerving allegiance to the class of securities that the services were intended to benefit is sufficient to warrant denial of compensation from the estate. Where the claimant's clients, in addition to their ownership of a particular class (R-3, 204) of securities, have special interests, adverse to the other holders of the same class of security, the claimant must look for compensation to his clients rather than to the estate.<sup>36</sup>

Bond and Share occupied a unique position, not only by reason of the "Deep Rock" situation previously discussed, but also because of its interests in the various classes of securities. Bond and Share had a special and adverse interest in the reorganization in addition to its interest as a holder of any particular type of security of Electric, which must be said to have been paramount to the interest of a particular class. Thus, it may be said that Bond and Share's interest in the reorganization lay in the solution of problems under the Holding Company Act in a manner not prejudicial to its own ultimate plans, and in obtaining for itself, based upon all the varied securities of Electric owned by it, and despite the contention for subordination, the greatest possible participation in the reorganization. The interest of Bond and Share lay not only in the amount which it might receive but also in the nature and type of securities for reasons different from those affecting either the estate or the public.

Bond and Share's diversity of interests on the basis of ownership of securities may be summarized briefly: In

<sup>35</sup> Cf. *Woods v. City National Bank & Trust Co.*, 312 U. S. 262.

<sup>36</sup> *London v. Snyder*, 163 F. 2d 251 (C. A. 8, 1947).



addition to owning 1,976,638 shares (57.23%) of the common stock of Electric, Bond and Share also owned 13,905 shares (18.59%) of the \$7 Second Preferred Stock of Electric. Since the liquidation preference of that stock as of March 31, 1948 was \$212 per share, Bond and Share's claim with respect to these securities based on liquidation preference was \$2,947,860. Bond and Share also owned 393,408 Option Warrants (73.57%). If we assume the value of each Option Warrant to be \$8.50,<sup>37</sup> then Bond and Share's interest in the Option Warrants, based upon the estimated value of the amount received was \$3,343,968. Further, conflict existed in the fact that claims were asserted against Bond and Share on behalf of Electric and its subsidiaries, based upon alleged acts of mismanagement and spoliation. Settlement of these claims constituted an integral part of Bond and Share's overall program for compliance with the Act as set forth in its original Plan III for compliance with the Act filed with this Commission in 1945. The possible extent of liability on these claims was asserted to be as much as \$15,000,000 by those opposing the proposed settlement. Further, the settlement of these claims might have taken some form other than the payment of cash proposed in the plan and adopted by the Commission. Bond and Share consistently asserted that the settlement of claims was a necessary part of any plan of Electric for compliance, and in fact the claims settlement was first proposed as part of the plan by Bond and Share. Further, counsel for Bond and Share opposed any separation of the claims aspect from other parts of the plan as proposed by the opponents of the plan in argument before the District Court.

(R-3, 205) Additional evidence of the dual position of Bond and Share exists in the circumstances that the public common stockholders, in seeking a greater subordina-

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<sup>37</sup> The Commission found that the Option Warrants were entitled to  $\frac{1}{3}$  of a share of common stock of Electric and also found that the value of that common stock was between \$25 and \$30 per share.

tion of Bond and Share, were in a position completely antithetical to that of Bond and Share. Since Bond and Share's interest lay in paying as little as possible in settlement of claims, and since the interest of Electric was to recover as much as possible from Bond and Share with respect to these claims, it is patent that Bond and Share could not have been acting for the interest of the estate in seeking as favorable a settlement to it as was possible.

Since we reach the conclusion that Bond and Share was in the position of a private claimant seeking to promote its own best interests, and having such diverse interests as to make impossible complete loyalty to a class or to the estate, we need not pass on the question of whether it contributed to the formulation or carrying out of a successful plan of reorganization. The situation is comparable to that existing in the case of *London v. Snyder*,<sup>38</sup> where the Court sustained denial of compensation to a claimant whose bid for the properties made possible the reorganization. The Court there held (163 F. 2d 621, 628):

"The court further pointed out that the so-called plans which this group presented from time to time were in reality bids for the acquisition of debtor's properties on terms satisfactory to the bidders, and that necessarily the interest of counsel's clients, as bidders for the properties of the debtor, was to acquire them on the best terms possible, and therefore in conflict with the interests of the debtor and its other creditors."

Moreover, we adopted the same view in a case under Section 11 of the Act where a parent sought compensation from a subsidiary for services rendered in the reorganization of the subsidiary.<sup>39</sup> In that case, counsel for the holding company parent of the subsidiary being reorganized

<sup>38</sup> *Supra*.

<sup>39</sup> *North Shore Gas Company*, 13 S. E. C. 139 (1943).

was in charge of the reorganization of the subsidiary and in fact such reorganization could not have been accomplished without contribution by the parent. We did not allow counsel for the holding company to recover from the subsidiary for those services rendered in connection with the formulation of the plan on the grounds that at that time counsel was acting for the primary interest of the holding company. Reimbursement was granted, (R-3, 206) however, for services rendered in carrying out the plan once agreement was reached. These latter services consisted of work in connection with a refunding of securities and certain of the mechanics of consummation, services for which the subsidiary would have normally paid. The Commission there held (13 S.E.C. at p. 149):

“Since the services of Pam rendered in the reorganization and for the minority stockholders of the Chemical Company were an incidental part of the general effort to salvage as much as possible for North Continent in its capacity both as a defendant against the Gas Company’s claims and as a claimant in its own right, and since North Continent’s defense against the claims was inextricably interwoven with its participation in the reorganization we think it would not be fair or equitable for the reorganized Gas Company to bear any part of the fee for this category of Pam’s services.”

Since all parts of a reorganization are interwoven, the disability existing by reason of antagonistic relationships necessarily permeates the entire case, and is not dispelled by having separate counsel act with respect to separate parts of the proceedings. There can be no independence of counsel in this matter since all of the services are subject to direction of the client whose interests are different from the estate and other stockholders.

Reference should also be made to the magnitude of the claim here asserted and the effect payment thereof

would have on the assets of Electric. Such a charge, arising out of the plan, would have some bearing upon the fairness of the allocations made under it. One basis for our jurisdiction over fees, as stated in our *Engineers* decision,<sup>40</sup> is the consequence which their payment out of the estate has on the size of the estate available for distribution and the effect thereof upon the fairness of the allocations to various classes of security holders. Our consideration of the plan and our reservation over fees foresaw that substantial sums would have to be paid out to fee claimants. It may well be that, had we anticipated in addition a claim by Bond and Share of over a quarter million dollars, our decision on the fairness of the allocation might have been affected.

We need not now determine whether, under other special circumstances not existing here, a holding company may recover from a subsidiary for services rendered to it in the course of a reorganization;<sup>41</sup> but for the reasons heretofore set forth, we shall deny the application of Bond and Share for compensation from the estate of Electric.

(R-3, 207) We shall now consider the individual claims for services rendered to Bond and Share, in accordance with the principles heretofore set forth.

*Simpson Thacher & Bartlett*—Requested:—

Fee:	\$40,000
Expenses:	3,362.22

Simpson Thacher & Bartlett was engaged by Bond and Share on or about July 1, 1946 to represent Bond and Share in connection with those aspects of any Electric

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<sup>40</sup> *Engineers Public Service*, Holding Company Act Release No. 7041 (December 4, 1946).

<sup>41</sup> Cf. *Columbia Gas & Electric Corporation*, 17 S. E. C. 549 (1944); *The Laclede Gas Light Co.*, Holding Company Act Release No. 6954 (October 22, 1946); *Utilities Employees Securities Company*, Holding Company Act Release No. 7307 (March 25, 1947); *Central Public Utility Corporation*, Holding Company Act Release No. 8468 (August 25, 1948).

plan dealing with the assertion of Claims against Bond and Share based upon mismanagement. The initial employment of Simpson Thacher & Bartlett in this capacity continued to September 20, 1946 when argument was had before the Commission on the then pending plan of Electric. At these hearings and in the briefs and arguments the claims settlement was not attacked by any of the participants or by the staff. The affidavit of Simpson Thacher & Bartlett states that it became apparent by December 1, 1946 that the plan of Electric would not be feasible by reason of market conditions. They, therefore, regarded their employment as terminated and recognized that whether or not they would participate in any subsequent plan of Electric would depend upon whether such plan would contain a settlement of the intercorporate claims.

Simpson Thacher & Bartlett was again retained by Bond and Share late in January 1948 in connection with a plan then in process of preparation, which plan was filed in March 1948 and was the plan which, with amendments, was ultimately consummated. Services of Simpson Thacher & Bartlett in connection with this plan were terminated on June 14, 1949 when argument was had before the Court of Appeals for the Second Circuit.

Simpson Thacher & Bartlett requests compensation in the amount of \$40,000 and reimbursement for disbursements in the amount of \$3,362.22. The recorded time of the firm amounts to a total of 705 hours, of which 223½ hours are stated as those of John F. MacLane, a senior partner in the firm, and 421 hours those of Benjamin C. Milner, then a senior associate, now a partner in the firm. The greater part of the time was spent in the 1948 proceedings, at which time the claims settlement was vigorously attacked by the Sincoff Committee.

We are of the view that the requested compensation is excessive for the services performed in these reorganization proceedings. We find, upon consideration of the entire record, that compensation in the amount of \$35,000 would be appropriate.

*Reid & Priest*—Requested:—Fee:       \$70,000

Expenses:   4,350

(R-3, 208) *Reid & Priest* first became associated with Bond and Share in the reorganization of Electric in the latter part of 1945. From the inception, this matter was under the personal supervision of James L. Boone, a senior partner in the firm. The affidavit of Boone states his firm expended 4,618 hours on this matter, of which 2,222 hours were those of Boone, 387 hours those of other partners, and 2,009 hours those of associates. *Reid & Priest* requests compensation in the amount of \$70,000 and disbursements in the amount of \$4,350.

The services of *Reid & Priest* may be divided into two parts, the first phase relating to the proceedings on the 1946 plans and the second phase relating to proceedings in connection with the 1948 plan. In the proceedings held in 1946, it will be recalled Electric first proposed its plan, then Bond and Share and Electric filed a joint plan. The position of Bond and Share in the 1946 proceedings was that of a very active participant and one of opposition to Electric's proposals. Generally, Bond and Share's position at that time was that the earnings estimates submitted by the operating officials of the Electric system were too conservative and its experts sought to show that earnings would be higher than those forecast. After the joint plan was filed in July of 1946 Bond and Share's efforts and those of Electric were correlated.

Until the compromise plan of 1948 had been agreed upon, the position of Bond and Share continued to be partially that of an adversary. After the filing of the plan in 1948, the position of Bond and Share and its counsel was one of mainly standing on the side lines leaving the laboring oar to counsel for Electric and the staff of the Division of Public Utilities.

In considering this application, we note that the claim for compensation of *Reid & Priest* includes services in 1946 which were unavailing. Since Bond and Share had a



positive duty to submit a plan for the reorganization of Electric, the services of counsel engaged by the company for that purpose are proper and need not be measured by the results obtained where the proposals are reasonable ones.<sup>42</sup> Accordingly, in reaching our conclusion, we do not distinguish between the services rendered in the two (R-3, 209) proceedings. Based on the entire record, we find that the firm of Reid & Priest may be granted an allowance in the amount of \$65,000 for services plus reimbursement for disbursements in the amount of \$4,350.

*Drexel & Co.*—Requested:—Fee: \$100,000

Drexel & Co. seeks compensation from Bond and Share in the amount of \$100,000 for services rendered as financial consultant to Bond and Share on matters affecting Electric. For the most part, these services were performed by Edward Hopkinson, a partner of Drexel & Co., assisted by other members of the firm and associates, and Ebasco Services, Incorporated. This firm has also been engaged as financial consultant to Bond and Share in other proceedings of that company to effectuate compliance with the Holding Company Act.

Hopkinson was engaged by Bond and Share on Electric matters in May 1945. His services at that time concerned the type of plan that might be filed by Electric for the simplification of its capital structure and the elimination of its preferred stocks. Studies made by Hopkinson and his partner, York, concerned the earnings potentials of Electric, the type of plan that might be filed, and the nature of the evidence that might be adduced in support of such a plan. After the filing of the plan, Hopkinson was consulted concerning the evidence to be adduced by Electric in support of the voluntary plan for retirement of the preferred stocks. During the course of the 1946 proceedings, Hopkinson reviewed the testimony adduced by Elec-

<sup>42</sup> Of course, we could not approve payment of services on this basis where such services were clearly not reasonably directed toward prompt and efficacious compliance with the statute.

tric as well as the so-called plans filed by various participants. He was consulted by Bond and Share with respect to the cross-examination of Electric's witnesses, and testified in behalf of Bond and Share seeking to show that the earnings of Electric might be in excess of the estimates submitted by the operating officials of the individual companies.

After the filing of the allocation proposals to the preferred stocks by Electric in May 1946, Hopkinson participated with officials of Bond and Share in the preparation of a plan to be submitted by Bond and Share, which plan was filed May 9, 1946. Thereafter, discussions were held with Hopkinson and officials of Electric and Bond and Share looking toward the working out of a compromise between the two companies, resulting in the filing of the joint plan of July 1946.

Hopkinson attended the hearings on the joint plan, and testified as to the fairness of the allocations to the preferred stocks. In addition, he was consulted with respect to the brief filed jointly by Bond and Share and Electric and made certain suggestions with respect to it. (R-3, 210) During the year 1947, while the plan was before the Commission, but not feasible because of market conditions, Hopkinson was consulted by Bond and Share with respect to other possible plans for the solution of Electric's Section 11 problems.

In 1948, Hopkinson was consulted by Bond and Share concerning the possible allocations in a new plan that might be filed by Electric, and took part in, or was advised of, negotiations which ultimately resulted in the plan filed on March 24, 1948, and which, with relatively minor modification, was eventually consummated. Hopkinson did not actively participate in the 1948 proceedings, once agreement was reached, but was kept advised of its progress.

Hopkinson stated that he did not keep a record of hours spent on Bond and Share matters, but states that during the years 1945 and 1946 the work was very intensive. It appears from the record that the period of inten-

sive work existed from May 1945 to August 1946. From then until the latter part of 1947 there was little activity on Electric matters. Thereafter, Hopkinson was active in the period of negotiations, namely, from January to March 1948. During the entire period Hopkinson was engaged on other plan matters of Bond and Share, including the plans for the retirement of its preferred stocks, and Bond and Share's plan for over-all compliance with the Act, and American Power & Light Company's plans for reorganization under Section 11. Further, during part of the period in which services were performed in Electric matters, Hopkinson was actively engaged in numerous Section 11(e) proceedings before the Commission.

Based upon a review of the entire record in the proceeding, and giving effect to Hopkinson's standing in the financial community, the extent and nature of the services, and the approximate time spent, in so far as we are able to reconstruct it in the absence of more definite evidence as to hours spent, we reach the conclusion that \$50,000 represents appropriate compensation for the services rendered. Accordingly, we shall grant the application for payment of this amount by Bond and Share, to this extent, and deny it in so far as it exceeds this amount.

*Ebasco Services, Incorporated—*

Requested:—Fee: \$79,087.02

Ebasco Services, Incorporated ("Ebasco"), a wholly owned service company subsidiary of Bond and Share, seeks compensation and reimbursement of expenses from Bond and Share in the amount of \$79,087.02, for services rendered to Bond and Share in connection with Section 11 proceedings of Electric. These services were performed over the period 1945-1949, and the record indicates that such services were billed to Bond and Share at cost, including applicable overheads. The application states that Ebasco employees devoted approximately 2,200 man days to these services, which, in the main, consisted of studies of earnings, analyses of the subsidiaries of Electric, and

financial analyses generally. (R-3, 211) Ebasco prepared most, if not all, of the exhibits introduced in the proceedings by Hopkinson and was available to Hopkinson for the development of material and research. Generally, it may be said that Ebasco prepared the material used by Bond and Share and its financial consultant in arriving at their conclusions, but did not independently advise as to the type of plan to be filed, or the allocations in such plan.

Since the services of Ebasco were rendered at cost, and since Bond and Share is the owner of all the outstanding securities of Ebasco, we find no basis for objection to the payment by Bond and Share of the amount requested. Accordingly, we shall grant the application of Ebasco, but as in the case of the other Bond and Share disbursements, deny the application of Bond and Share for reimbursement from Electric.

*Ralph E. Davis*—Requested:—Fee:       \$11,250

Expenses:   1,271.19

Ralph E. Davis, a petroleum and natural gas engineer, requests a fee from Bond and Share in the amount of \$11,250 which includes \$4,371.19 paid by Davis to his associates for services and expenses.

The services rendered by Davis included a review of the natural gas and oil properties of Union Producing Company, a subsidiary of United, and an estimate as of December 31, 1945 of the oil and gas reserves of the United system controlled through ownership of fee and leasehold properties and by virtue of gas purchase contracts. In addition, Davis made a valuation of the reserves of Union and testified in the 1946 proceedings in support of his studies. The record shows that in addition to clerical and stenographic work, Davis and two associates each spent approximately a month in the performance of the services.

We find the amount requested appropriate for the services rendered, and, accordingly, shall grant the application, and authorize payment by Bond and Share, less the

amounts already paid to Davis. As with the other Bond and Share applications, we deny the request for reimbursement from Electric.

*Benjamin T. Brooks*—Requested:—Fee: \$700.13

Benjamin T. Brooks, a research petroleum chemist, requests a fee from Bond and Share in the amount of \$700.13.<sup>43</sup> Brooks was engaged by Bond and Share to testify in the 1945-1946 proceedings on the subject of chemical utilization of natural gaseous hydrocarbons including natural gas in the production of synthetic products. Brooks spent five days on his assignment and states that the requested fee is at a rate usually charged by him in matters of similar importance.

(R-3, 212) We shall approve the payment made by Bond and Share as not unreasonable, but shall deny Bond and Share's request for reimbursement from Electric.

*Conclusions with Respect to Application for Services Rendered to Bond and Share*

For the reasons heretofore indicated, our order will deny the application of Bond and Share for reimbursement of amounts paid or payable for services rendered to Bond and Share in the Electric proceedings. Our order will further authorize payment by Bond and Share to the applicants in the amounts we have heretofore set forth as appropriate compensation for the services rendered.

An appropriate order will issue releasing jurisdiction with respect to fees and expenses, as heretofore reserved, granting the applications to the extent indicated in our Findings herein, and denying the applications as heretofore indicated.

By the Commission (Commissioners McEntire, Rowen, and Millonzi), Chairman Cook not participating.

ORVAL L. DuBois,  
Secretary.

[SEAL]

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<sup>43</sup> This amount has already been paid by Bond and Share.

(R-3, 213)

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

April 21, 1952

*In the Matter of*

ELECTRIC POWER & LIGHT CORPORATION

File No. 54-139

(Public Utility Holding Company Act  
of 1935)

*In the Matter of*

ELECTRIC BOND AND SHARE COMPANY

ELECTRIC POWER & LIGHT CORPORATION,

ET AL

Respondents

File No. 59-12

(Public Utility Holding Company Act  
of 1935)

Order Directing  
Payment of Final  
Allowances of  
Fees and Ex-  
penses

Electric Power & Light Corporation ("Electric"), formerly a registered holding company and a subsidiary of Electric Bond and Share Company ("Bond and Share"), also a registered holding company, having heretofore filed a plan and amendments thereto for compliance with Section 11 (b) of the Public Utility Holding Company Act of 1935, pursuant to Section 11 (c) of the Act, and the Commission having entered its Findings and Opinion and Order approving said plan, as amended, (Holding Company Act Release Nos. 8889 and 8906 March 1, 1949 and March 7, 1949, respectively), and said plan, as amended, having provided that Electric would pay such fees and



expenses as the Commission should find appropriate, subject to the right of Electric to seek judicial review of any such order, and said plan having since been consummated and carried out in accordance with its terms; and

The Commission having, by said Order of March 7, 1949, reserved jurisdiction to determine the reasonableness and appropriate allocation of all fees, expenses and other remuneration incurred in connection with said plan, as amended; and

Applications for allowances for fees and reimbursements for expenses having been filed, a public hearing having been held, the Commission having on December 22, 1950 issued an Interim Order (Holding Company Act Release No. 10310) permitting Electric to make certain payments with respect to fees and reimbursement of expenses; and

The Commission having considered the record and having this day filed its Findings and Opinion herein; on the basis of said Findings and Opinion:

(R-3, 214) IT IS ORDERED that the payment by Electric of the following fees and disbursements, less such amounts as have heretofore been paid, be, and hereby is approved, and Electric be, and hereby is, directed to make payment of such amounts herein authorized as have not already been paid.

	Fees	Expenses
Cahill, Gordon, Zachry & Reindel	\$207,700.00	\$ 9,976.53
John Jirgal .....	72,000.00	19,865.51
Reid & Priest.....	3,500.00	—
Guaranty Trust Company of New York .....	61,547.54	7,769.16
Percival E. Jackson.....	140,000.00	7,726.71
C. Perry King.....	2,000.00	—
Whitehorn & Cowin and Buchman and Buchman .....	22,500.00	1,170.53

	Fees	Expenses
Nathan B. Kogan, Samuel M. Koenigsberg and Victor Brudney .....	9,500.00	2,016.75
Martin W. Davenport.....	1,000.00	20.62
Burns, Blake & Rich.....	9,500.00	2,770.06
Johnson-Biewend Common Stockholders Committee .....	—	8,612.89

IT IS FURTHER ORDERED that the applications of Israel Beckhardt; Spence, Hotchkiss, Parker & Duryee; and P. Harold Peterson be, and the same hereby are, denied, and that the application of the Johnson-Biewend Committee for reimbursement of disbursements made by way of fees to the firm of Becker, Berman & Odell in the amount of \$5,000, and to P. Harold Peterson in the amount of \$2,734.58 be, and the same hereby is, denied.

IT IS FURTHER ORDERED that the application of Bond and Share for reimbursement from Electric for expenses incurred by Bond and Share in the reorganization proceedings of Electric be, and the same hereby is, denied, and that in so far as any claimants for services rendered to Bond and Share make claim against Electric for such services such applications be, and the same hereby are, denied.

IT IS FURTHER ORDERED that payment by Bond and Share of the following fees and disbursements be, and the same hereby is, approved and Bond and Share be, and hereby is, directed to make payment of such amounts herein authorized as have not already been paid.

(R-3, 215)	Fees	Expenses
Reid & Priest.....	\$65,000.00	\$4,350.00
Simpson Thacher & Bartlett.....	35,000.00	3,362.22
Drexel & Company		
(Edward Hopkinson, Jr.).....	50,000.00	—
Ebasco Services Incorporated....	79,087.02	—
Ralph E. Davis.....	11,250.00	1,271.19
Benjamin T. Brooks.....	700.13	—

IT IS FURTHER ORDERED that to the extent the applications herein exceed the amounts approved as payment of fees and reimbursement of expenses, such applications be, and the same hereby are, denied.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,  
Secretary.

(R-3, 216) UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

*In the Matter of*  
ELECTRIC POWER & LIGHT CORPORATION  
ELECTRIC BOND AND SHARE COMPANY

Supplemental  
Application  
Civil Action  
No. 49-347

TO THE HONORABLE THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

The Securities and Exchange Commission, by its attorneys, Myron S. Isaacs and Marvin S. Fink, respectfully states:

1. On March 1, 1949, the applicant, Securities and Exchange Commission (the "Commission"), issued its Findings and Opinion on a plan for the dissolution of Electric Power & Light Corporation ("Electric"), a registered holding company and then a subsidiary of Electric Bond and Share Company ("Bond and Share"), also a registered holding company. That plan was submitted by Electric pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 (the "Act"). In said Findings and Opinion (Exhibit B to Commission Application herein dated March 7, 1949), the Commission found (at p. 98):

“The Plan contains no provision for the payment of fees and expenses in connection with the Plan. Dixon testified that Electric would submit to our jurisdiction. The record being incomplete with respect to fees and expenses, we shall reserve jurisdiction for that purpose and shall condition our approval of the Plan on the filing by Electric of an amendment providing that such fees and expenses as we find appropriate will be paid by the company.”

2. On March 3, 1949, Electric filed an amendment to its Plan (the “Amended Plan”) for the purpose of complying with the modifications suggested in the Commission’s Findings and Opinion dated March 1, 1949, said amendment (Exhibit D to Commission Application herein dated March 7, 1949) providing, among other things:

(R-3, 217) “2. Subject to the rights of Electric to seek judicial review of any order issued by the Commission with respect to fees and expenses to be paid by Electric in the instant proceedings, Electric acknowledges the jurisdiction of the Commission to pass upon fees and expenses of parties and persons who have been granted participation herein and their counsel, agents and employees, and agrees to pay such fees and expenses as the Commission shall find it appropriate for Electric to pay and as shall have been approved for payment by Electric by order of the Commission or, in the event of judicial review, by final judgment of the Court.”

3. By order dated March 7, 1949 (Exhibit E to Commission Application herein dated March 7, 1949), the Commission approved the Amended Plan subject to the following conditions, among others (at p. 3):

“2. That jurisdiction be, and hereby is, specifically reserved to determine the reasonableness and ap-

appropriate allocation of all fees and expenses and other remuneration incurred or to be incurred in connection with the said Plan, as amended, and the transactions incident thereto \* \* \*.”

4. By application filed in this Court on March 7, 1949, the Commission requested this Court to approve the Amended Plan and to enforce and carry out its terms and provisions. After appropriate notice and hearings, this Court filed its Memorandum Opinion herein dated April 13, 1949, approving the Amended Plan.

5. By Order dated April 22, 1949, this Court approved and enforced the **Amended Plan**, subject to the terms and conditions of the Commission's Order dated March 7, 1949. Said Order of the Court adopted the findings of fact and conclusions of law set forth in the Findings and Opinion of the Commission dated March 1, 1949, and the Order dated March 7, 1949. Neither the Opinion of this Court nor its Order dealt with the question of fees and expenses. Said Order of the Court also took exclusive jurisdiction of Electric and its assets, wherever located, subject to the terms and conditions of the Commission's Order of March 7, 1949, and to the extent necessary to enforce and carry out the terms and provisions of the Amended Plan. Said Order of the Court also provided (p. 6):

(R-3, 218) “12. This Court reserves jurisdiction to consider any claims or controversies arising out of or in connection with the consummation of the Plan, including any claims against or controversies with Electric or Bond and Share, and any claims against their respective officers, directors, employees or agents for any of their acts in carrying out the provisions of the Plan.”

“13. This Court further reserves jurisdiction to entertain such further proceedings, to enter such supplemental orders, and to take such further action in

connection with the Plan, the transactions incident thereto, and the consummation thereof as may be necessary or appropriate."

6. Certain appeals were filed from the Order of this Court with the Court of Appeals for the Second Circuit. On May 5, 1949, that Court issued its Order denying an application for a stay of the proceedings and on May 16, 1949, the Supreme Court of the United States also denied the application for a stay (337 U. S. 903). Thereafter, the Court of Appeals for the Second Circuit affirmed the Order of this Court (176 F. 2d 687).

7. Thereafter applications for the allowance of fees and expenses were filed with the Commission by those who had participated in the proceedings. By Notice and Order dated February 28, 1950, the Commission reconvened the hearings in the proceedings for the purpose of taking evidence on the applications for allowances. Said Notice and Order were served upon Electric and Bond and Share and upon said applicants, and were published as Holding Company Act Release No. 9703, a copy of which is attached hereto as Exhibit A. Copies were published in the Federal Register, were furnished to the Press, and were mailed to all persons on the Commission's mailing list to receive copies of releases under the Act.

8. After public hearings and the submission of briefs by certain of the applicants, oral argument having been waived, the Commission on April 21, 1952, issued its Findings and Opinion and Order with respect to the applications for allowances, and on May 23, 1952 issued a Supplemental Order in connection therewith. The Findings and (R-3, 219) Opinion and Order together with the Supplemental Order directed Electric to pay the following amounts as final allowances in the proceedings:



	<u>Fees</u>	<u>Expenses</u>
Cahill, Gordon, Zachry & Reindel.	\$207,700.00	\$ 9,976.53
John Jirgal .....	72,000.00	19,865.51
Reid & Priest.....	3,500.00	—
Guaranty Trust Company of New York .....	61,547.54	7,769.16
Percival E. Jackson.....	140,000.00	7,726.71
C. Perry King.....	2,000.00	—
Robert I. Herzog.....	1,000.00	—
Whitehorn & Cowin and Buchman and Buchman .....	22,500.00	1,170.53
Nathan B. Kogan, Samuel M. Koenigsberg and Victor Brudney	9,500.00	2,016.75
Marti W. Davenport.....	1,000.00	20.62
Burns, Blake & Rich.....	9,500.00	2,770.06
Christian A. Johnson and Cameron Biewend, Common Stockholders Committee .....	—	8,612.89

9. The Commission's Order denied the applications of Israel Beckhardt; Spence, Hotchkiss, Parker & Duryee; and P. Harold Peterson, and denied the application of the Johnson-Biewend Committee for reimbursement of certain disbursements as set forth in the said Order.

10. Electric has made the payments as directed, except that Burns, Blake & Rich, and Christian A. Johnson and Cameron Biewend have refused to accept such payments.

11. The Commission's Order of April 21, 1952, denied the application of Bond and Share for reimbursement from Electric for the expenses incurred by Bond and Share in the reorganization proceedings of Electric, and directed that Bond and Share make payment of the following amounts by way of final allowances for services rendered to it in these reconvened proceedings:

(R-3, 220)	Fees	Expenses
Reid & Priest.....	\$65,000.00	\$4,350.00
Simpson Thacher & Bartlett.....	35,000.00	3,362.22
Drexel & Company (Edward Hopkinson, Jr.).....	50,000.00	—
Ebasco Services Incorporated.....	79,087.02	—
Ralph E. Davis.....	11,250.00	1,271.19
Benjamin T. Brooks.....	700.13	—

12. The said Findings and Opinion and Order of the Commission were published as Holding Company Act Release No. 11175, a copy of which is attached hereto as Exhibit B, and the said Supplemental Order of the Commission dated May 23, 1952 was published as Holding Company Act Release No. 11278, a copy of which is attached hereto as Exhibit C.

13. In view of the terms and provisions of said Amended Plan and on the basis of the Commission's Orders dated March 7, 1949, April 21, 1952, and May 23, 1952, the Amended Plan provides in effect that Electric will pay the fees and expenses of the persons named therein, including Burns, Blake & Rich and Christian A. Johnson and Cameron Biewend, in the amounts approved by the said Order of April 21, 1952, and will pay no fees or expenses of Israel Beckhardt; Spence, Hotchkiss, Parker & Duryee; and P. Harold Peterson; that Bond and Share will pay the amounts authorized by the said Order of April 21, 1952; and that Bond and Share may not be reimbursed by Electric for its expenses in the proceedings.

14. Certain of said fee claimants have indicated to the Commission that they intend to seek review of the Commission's denial of their applications for fees and for reimbursement of expenses in whole or in part. This Court, having taken exclusive jurisdiction of Electric and

its assets for the purpose of carrying out the terms and provisions of the Amended Plan, and having reserved appropriate (R-3, 221) jurisdiction, has full jurisdiction to review said determination of the Commission.

WHEREFORE, applicant respectfully prays that the Court, in accordance with Sections 11(e) and 18(f) of the Act, take the following action:

(a) Hold a hearing on this Supplemental Application;

(b) Order that notice of said hearing be given by Electric to the persons named in Paragraphs 8, 9 and 11 hereof, and to such other persons as the Court may deem appropriate;

(c) After such notice and hearing, approve the payment and denial of payment of fees and expenses to the aforesaid fee claimants, as determined by the Commission, and the portions of the Amended Plan relating thereto, as fair and equitable and as appropriate to effectuate the provisions of Section 11 of the Act;

(d) Issue an appropriate order enforcing and carrying out the terms and provisions of the portions of the Amended Plan relating to the payment and denial of payment of fees and expenses to the aforesaid fee claimants, as determined and ordered by the Commission, and directing Electric, its officers, directors and agents, to take such steps and do such acts as may be necessary to carry out the terms and provisions thereof and the Orders of this Court;

(e) After approval of the portions of the Amended Plan relating to the payment and denial of payment of fees and expenses to the aforesaid fee claimants, as determined and ordered by the Commission, enjoin the persons named in Paragraphs 8, 9 and 11 hereof, and all other persons, from doing any act or taking any action interfering or tending to interfere with these proceedings, or with

the carrying out of the portions of the Amended Plan relating to the payment and denial of payment of fees and expenses to the aforesaid claimants as determined and ordered by the Commission, or with compliance with the Orders of the Commission with respect thereto, including the commencement or prosecution of any action, (R-3, 222) suit, or proceeding, at law or in equity or under any statute, in any court or before any executive or administrative officer, commission or tribunal, other than such proceedings before the Commission or this Court as may be appropriate under the Act and the Rules and Regulations promulgated thereunder, and such review, if any, in an appropriate appellate court of the United States as may be provided by law;

(f) Grant such other, further, and different relief and enter such other orders or decrees as the Court may find to be just and equitable in the premises.

MYRON S. ISAACS,

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Myron S. Isaacs

Chief Counsel,

Division of Public Utilities.

MARVIN S. FINK,

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Marvin S. Fink

Attorneys for Securities and  
Exchange Commission,  
425 Second Street, N. W.  
Washington 25, D. C.

JUNE 19, 1952.

(R-2, 223)

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

<i>In the Matter of</i>	}	Civil Action No. 49347
ELECTRIC POWER & LIGHT CORPORATION		
ELECTRIC BOND AND SHARE COMPANY		

STATEMENT OF OBJECTIONS OF DREXEL & CO.  
TO THE SUPPLEMENTAL APPLICATION OF  
THE SECURITIES AND EXCHANGE COMMISSION  
FILED JUNE 20, 1952.

1. The facts stated in paragraphs 1 to 12, inclusive, of the supplemental application of the Securities and Exchange Commission, hereinafter called the "Commission", filed herein June 20, 1952 are admitted.

2. The facts stated in paragraph 13 of said supplemental application are admitted except for the allegation that "the Amended Plan provides in effect \* \* \* that Bond and Share will pay the amounts authorized by said order of April 21, 1952". This allegation is denied, and it is averred on the contrary that the amended plan, to which Electric Bond and Share Company was not a party, contains no provision whatsoever on the subject of the payment of fees by Electric Bond and Share Company.

3. The facts stated in paragraph 14 of said supplemental application are admitted.

4. Drexel & Co. objects to paragraph (c) of the prayer of said supplemental application insofar as it requests the Court to approve of the denial of payment of the agreed upon fee of \$100,000 by Electric Bond and Share Company to Drexel & Co.

5. Drexel & Co. objects to paragraph (d) of said prayer insofar as it requests the issuance of an order enforcing and carrying out the denial of payment of said fee.

6. Drexel & Co. objects to paragraph (e) of said prayer insofar as it requests the Court to approve of the denial of the payment of said fee and to enjoin Drexel & Co. from collecting or Electric (R-3, 224) Bond and Share Company from paying the same.

7. Drexel & Co. objects to the following portions of the findings, opinion, and order of the Commission dated April 21, 1952;

(a) "Bond and Share does not contest the jurisdiction of the Commission to pass upon the determination of what amounts are payable by it for services rendered in connection with the Electric Proceedings" (p. 28).

(b) "Since the Electric proceedings constitute only one phase of the entire proceedings involving the simplification of the Bond and Share system, our statutory duty to supervise the expenses of reorganization would be in part defeated if we did not pass upon the expenses of the top holding company in the system in the course of passing upon reorganizations or its subsidiary holding companies. Any other cause might result in such dissipation of the assets of the top holding company as to defeat in part the purposes of the statute" (p. 28).

(c) "Based upon a review of the entire record in the proceeding, and giving effect to Hopkinson's standing in the financial community, the extent and nature of the services, and the approximate time spent, insofar as we are able to reconstruct it in the absence of more definite evidence as to hours spent, we reach the conclusion that \$50,000 represents appropriate compensation for the services rendered. Accordingly, we shall grant the application for payment of this amount by Bond and Share, to this extent, and deny it insofar as it exceeds this amount" (p. 37).



(d) "IT IS FURTHER ORDERED that to the extent the applications herein exceed the amounts approved as payment of fees and reimbursement of expenses, such applications be, and the same hereby are, denied" (p. 42).

8. Drexel & Co. objects to the failure of the Commission to include in its findings, opinion, and order the following:

(a) Drexel & Co. suggested and/or continuously urged, and was largely responsible for, the inclusion in the final amended plan of several of its most important provisions.

(R-3, 225) (b) \$100,000, which Electric Bond and Share Company and Drexel & Co. have agreed on after negotiation as a fair and reasonable amount, represents appropriate compensation to Drexel & Co. for the services rendered by it to Electric Bond and Share Company as financial consultant in this proceeding.

(c) The Commission has no jurisdiction under the applicable provisions of the Public Utility Holding Company Act of 1935 to pass on or reduce the agreed upon amount of compensation payable by Electric Bond and Share Company to Drexel & Co. for such services.

9. Electric Bond and Share Company still believes that the fee of \$100,000 requested is reasonable and that Drexel & Co. is justly entitled thereto and, unless prohibited by Commission or Court order, is prepared to pay the same in full. A copy of a letter from that company to Drexel & Co. so stating is attached hereto marked Exhibit A.

10. Electric Bond and Share Company filed its application-declaration in this proceeding, requesting the Commission's approval of its acquisition from and transfer to Electric Power and Light Company of securities pursuant to said amended plan, under protest believing that it was not required. It did so only because the staff

of the Commission advised Electric Bond and Share Company that a failure to file such an application would raise new problems in the proceeding which might cause prolonged delay in obtaining approval of the plan, which in turn might cause failure of the plan upon which agreement had been obtained, after lengthy conferences held over an extended period for the purpose of arriving at a compromise satisfactory to all groups of security holders, only on condition it be consummated promptly. A copy of an extract of the testimony of Mr. Curtis E. Calder, Chairman of the Board of Directors of Electric Bond and Share Company, in the proceeding before the Commission relating to that company's Plan III, appearing at pages 3302-04 of the official report of proceedings before the Commission (Docket No. 54-127), is attached hereto marked Exhibit B.

11. The findings and opinion of the Commission that \$50,000 represents appropriate compensation for the services rendered by Drexel (R-3, 226) & Co. to Electric Bond and Share Company in this proceeding (a) are not supported by substantial evidence in the light of the record as a whole and (b) are arbitrary, capricious, an abuse of discretion, and not in accordance with law.

12. The Commission has no jurisdiction under the applicable provisions of the Public Utility Holding Company Act of 1935 to pass on or reduce the agreed upon amount of compensation payable by Electric Bond and Share Company to Drexel & Co. for services rendered by the latter to the former as financial consultant in this proceeding.

WHEREFORE Drexel & Co. respectfully prays that the Court (a) deny the prayer of the Securities and Exchange Commission insofar as it requests affirmance of the Commission's disapproval of the payment by Electric Bond and Share Company to Drexel & Co. of \$100,000 as compensation to Drexel & Co. for services rendered by it to Electric Bond and Share Company in this proceeding, (b)

determine that \$100,000 is a proper fee for such services under the circumstances of this case, and (c) determine that the Commission has no jurisdiction to pass on or reduce the agreed upon amount of such compensation or to prohibit Electric Bond and Share Company from paying or Drexel & Co. from receiving the same.

Respectfully submitted,

THOMAS REATH, Esq.,

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Thomas Reath, Esq.

JOHN MULFORD, Esq.,

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John Mulford, Esq.

DRINKER BIDDLE & REATH,  
Attorneys for Drexel & Co.,  
117 South 17th Street,  
Philadelphia 3, Pa.

SEPTEMBER 11, 1952.

(R-3, 227)

EXHIBIT "A".

ELECTRIC BOND AND SHARE COMPANY  
Two Rector Street  
New York 6, N. Y.

George G. Walker  
President

September 4, 1952

Mr. Edward Hopkinson  
Drexel & Company  
15th and Walnut Streets  
Philadelphia 1, Pa.

Dear Mr. Hopkinson:

It is our understanding that you contemplate filing objections to an order of the Securities and Exchange Commission which reduces the amount of your fee in connection with the reorganization proceedings of Electric Power & Light Corporation to be paid by us from the figure of \$100,000 which had been agreed on between us to \$50,000.

This is to advise you that in our opinion the fee of \$100,000 *requested by you was entirely reasonable* in the light of the amount of work done and the value of the services rendered by you, that, unless prohibited by order of the Securities and Exchange Commission or a court having jurisdiction in the matter, we were prepared at the time that the application was made to the Securities and Exchange Commission to release jurisdiction over the fee and we are prepared now to pay you the sum of \$100,000 (less amounts heretofore paid on account) for services rendered, and that we believe that you are justly entitled to this fee.

We have no objection whatsoever to your making a statement to the above effect in connection with the pending court proceedings or to your utilizing this letter in any manner you wish.

Sincerely yours,

ELECTRIC BOND AND SHARE COMPANY  
GEORGE G. WALKER  
President

## EXHIBIT "B".

(R-3, 228) Extract from testimony of Mr. Curtis E. Calder, Chairman of the Board of Directors of Electric Bond and Share Company, in the proceedings relating to that Company's Amended Plan III, appearing at pages 3302-04 of the official report of proceedings before the Securities and Exchange Commission (Docket No. 54-127):

"Q. Can you tell us under what circumstances Bond and Share filed this application?

A. Yes. The issue as to the retention of United Gas stock by Bond and Share was raised by the staff of the Commission prior to the filing of the Electric plan. The staff's position was that unless Bond and Share filed an application for authority to acquire the United Gas stock and agreed to dispose of such stock within a year after its receipt, the staff would have to raise the question of retention in the Electric plan proceedings which might cause prolonged delay in carrying out that plan.

The condition upon which the approval of the participants in the Electric plan proceeding had been obtained was that the plan filed in March 1948 would be consummated promptly. Delay might, it was felt by all, cause failure of the plan upon which agreement had been obtained after lengthy conferences held over an extended period for the purpose of arriving at a compromise satisfactory to all groups of security holders. Having to choose between the two horns of the dilemma, Bond and Share chose the route which would provide for an expeditious consummation of the plan and reluctantly consented to the commitment contained in its application for Commission approval of the acquisition of the United Gas stock. We made our position clear, however, to the effect that our consent to this commitment should not be construed as a

consent to dispose of United Gas, and that we wished to reserve the right at the appropriate time to commence proceedings for relief from this commitment. The staff's view was that we should commence such proceedings within sixty days after issuance of an order by the Commission approving the Electric plan. The period for filing such proceedings was later extended by this Commission and the present proceedings filed by Bond and Share in connection with its Plan III constitute the "appropriate proceedings" for relief from Bond and Share's commitment to dispose of the common stock of United Gas now held by it and for determination of its right under the Holding Company Act to retain this common stock.

If we had not been obliged to file in March 1948 the application relating to United Gas stock to which I have referred, and which included our commitment to dispose of that stock within the year period, we would not have deemed it appropriate to file at this time with the Commission our application for exemption from the provisions of the Holding Company Act under Section 3.

(R-3, 229) It was our intention to file the exemption application only after we had disposed of all of our present investments other than Ebasco, Foreign Power and United Gas, and also after the Foreign Power situation had been further clarified.

However, since we were obliged to file our application in March 1948, at the time of the filing of the Electric Plan, we are under the duty to ask for a determination by the Commission at this time of our right to retain United Gas which necessarily now raises the whole question of our right to exemption from the Act."



(R-3, 116)

16)                         IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
Civil Action No. 49-347

*In the Matter of*

# ELECTRIC POWER & LIGHT CORPORATION

STATEMENT OF OBJECTIONS OF CHRISTIAN A. JOHNSON AND CAMERON BIEWEND INDIVIDUALLY AND AS A COMMITTEE FOR THE HOLDERS OF THE COMMON STOCK OF ELECTRIC POWER & LIGHT CORPORATION.

Christian A. Johnson and Cameron Biewend individually and as a Committee for the Holders of the Common Stock of Electric Power & Light Corporation make the following objections in the above-entitled matter to the Findings and Opinion of the Securities and Exchange Commission and to the enforcement of the terms and provisions of the portions of the Amended Plan of Reorganization relating to the payment and denial of payment and fees and expenses.

1. Objection is made to disallowance by the Securities and Exchange Commission (hereinafter called S. E. C. or Commission) of the following fees for which application has been made to the Commission:

(R-3, 117)

## Fee

Burns, Blake & Rich (Counsel for Committee) .....	\$26,475.00
Expenses and Disbursements of the Committee (in payment of \$5,000 to Becker, Berman & Odell as a fee and \$2,734.58 to P. Harold Peterson on account) .....	7,734.58
P. Harold Peterson (Financial Expert for Committee) .....	9,454.42

2. Objection is made to the Finding of the Commission that the failure of the Committee to change any part of the plan of Reorganization of Electric Power & Light Corporation finally approved is sufficient basis for disallowance of the fees of P. Harold Peterson entirely and disallowance of the major share of the fee of Burns, Blake & Rich.

3. Objection is made to the retroactive change by the Commission of its pronounced policy of granting reasonable fees to Committees performing competent work, regardless of any change in the final plan.

4. Objection is taken to the failure of the Commission to consider the fact that the valuations of the Committee and its expert have now been proved to be substantially correct, while those of the Commission have proved to be erroneous.

5. Objection is taken to the following finding of fact of the Commission, as having no basis in the record:

“\* \* \* it is significant that the allocation proposals made by the Johnson-Biewend Committee would have resulted in the \$7 Preferred Stock receiving securities and cash of a present value of between \$85 and \$95 in full compensation for their liquidation preference of \$189 and the redemption price of \$199.”

6. Objection is taken to the finding that the work of the law firm of Becker, Berman & Odell resulted in duplication of services.

By their Attorney

JOHN L. FLYNN,  
Attorney for the Committee For the  
Holders of the Common Stock of  
Electric Power & Light Corpora-  
tion.

(R-3, 230)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

*In the Matter of*  
ELECTRIC POWER & LIGHT CORPORATION

Civ. 49-347

## OPINION.

MYRON S. ISAACS, Esq., Chief Counsel Division of  
Public Utilities,

MARVIN S. FINK, Esq., attorneys for the Applicant,  
Securities and Exchange Commission, 425 Second Street,  
N.W., Washington 25, D.C.

MESSRS. DRINKER, BIDDLE & REATH, attorneys for  
Drexel & Co., 117 S. 17th Street, Philadelphia 3, Pa.,  
THOMAS REATH, Esq., JOHN MULFORD, Esq., of Counsel.

MESSRS. CAHILL, GORDON, ZACHRY & REINDEL, attorneys  
for Electric Power and Light Corporation, 63 Wall Street,  
New York 5, N. Y.

DANIEL JAMES, Esq., of Counsel.

ISRAEL BECKHARDT, Esq., attorney for Eva Liner, 10  
East 40th Street, New York, N. Y.

(R-3, 231) JOHN L. FLYNN, Esq., attorney for The John-  
son-Biewend Committee and for Messrs. Burns, Blake &  
Rich, 60 Wall Street, New York 5, N. Y.

JOHN W. CLANCY, *U.S.D.J.*

*Re the Drexel & Company objections:*

If the stockholders of Power and Light are affected  
by the disbursements for fees for services rendered in  
the formulation of its plan and such disbursements can  
be said to reflect on the fair and equitable quality of the  
plan, as was held in *Matter of Electric Bond and Share*,

80 Fed. Supp. 795, we are unable, despite the law stated in *Klein v. Board of Tax Supervisors*, 282 U. S. 19, at 24, to say that the stockholders of Bond and Share in this case are not affected by the expenses of Bond and Share necessarily incurred in the formulation of the plan in Power and Light's simplification proceeding.

All of the objections are overruled.

Dated: New York, N. Y.,  
December 23, 1952.

JOHN W. CLANCY,  
United States District Judge.

(R-3, 232)

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

*In the Matter of*

ELECTRIC POWER & LIGHT CORPORATION  
ELECTRIC BOND AND SHARE COMPANY

Civil Action  
No. 49-347

ORDER.

A Supplemental Application dated June 19, 1952, having been filed herein by the Securities and Exchange Commission ("Commission") on June 20, 1952, requesting, among other things, an order enforcing and carrying out the terms and provisions of those portions of an Amended Plan filed with the Commission by Electric Power & Light Corporation ("Electric"), a registered holding company, and a subsidiary company of Electric Bond and Share Company ("Bond and Share"), also a registered holding company, pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 ("Act"), relating to the payment and denial of payment of fees and expenses, and approving the payment and denial of payment of certain fees and expenses as determined and ordered by the Com-

mission; said Amended Plan having theretofore been submitted to the Commission by Electric and having been approved by the Commission and approved and enforced by this Court, subject to the Commission's reservation of jurisdiction to determine the reasonableness and appropriate allocation of all fees and expenses and other remuneration incurred in connection with said Amended Plan and the transactions incident thereto, and subject to this Court's reservation of jurisdiction to consider claims and controversies and to entertain further proceedings in connection with said Amended Plan; and

—This Court, by Order dated June 25, 1952, having fixed October 2, 1952, as the date for hearing for the purpose of determining whether those portions of said Amended Plan relating to the payment and denial of payment of fees and expenses by Electric are fair and equitable and appropriate (R-3, 233) to effectuate the provisions of Section 11 of the Act, whether the Court should enforce and carry out such terms and provisions of said Amended Plan, and for such other purposes as may appear necessary or appropriate in the premises; the Court having prescribed the notice to be given of such hearing and the time within which any objection might be made to said Supplemental Application of the Commission and to the enforcement and carrying out of the terms and provisions of those portions of said Amended Plan relating to the payment and denial of payment of fees and expenses; it appearing that due and sufficient notice of said hearing was given in accordance with the provisions of said Order of this Court dated June 25, 1952; and

Objections to said Supplemental Application having been filed herein by Drexel & Company ("Drexel"), by Christian A. Johnson and Cameron Biewend ("Johnson-Biewend"), and by Israel Beckhardt; the hearing having been duly held on October 2, 1952; the Commission and Electric having appeared at said hearing by their respective counsel in support of said Supplemental Application, and Drexel and Johnson-Biewend having appeared by their

respective counsel in opposition thereto; all interested persons having been afforded an opportunity for hearing; and the Court having duly considered said Supplemental Application of the Commission, the objections thereto, and the record herein, having filed its Opinion herein dated December 23, 1952, and being fully advised in the premises;

IT IS HEREBY FOUND, ORDERED, ADJUDGED, AND DECREED:

(1) The Court finds and concludes that the findings of fact and conclusions of law embodied in the Findings and Opinion and Order of the Commission dated April 21, 1952, and in the Supplemental Order of the Commission dated May 23, 1952, set forth as Exhibit B and Exhibit C, respectively, to the Commission's Supplemental Application herein, are supported by substantial evidence and were arrived at in accordance with legal standards.

(R-3, 234) (2) The payment and denial of payment of fees and expenses as determined and ordered by the Commission in its said Orders dated April 21, 1952, and May 23, 1952, and the portions of said Amended Plan relating to the payment and denial of payment of fees and expenses, are hereby approved as fair and equitable and as appropriate to effectuate the provisions of Section 11 of the Act, and the objections to said Supplemental Application are hereby overruled.

(3) The payment and denial of payment of fees and expenses as determined and ordered by the Commission, and the terms and provisions of those portions of said Amended Plan relating to the payment and denial of payment of fees and expenses, are hereby enforced, and Electric and its officers, directors, and agents are hereby ordered to take such steps and do such acts as may be necessary to carry out the terms and provisions of said Order of the Commission and the Order of this Court.

(4) Electric, Bond and Share, all security holders of Electric and Bond and Share and their subsidiaries, Drexel



and Company, Christian A. Johnson and Cameron Biewend, Israel Beckhardt, and all other persons, are hereby permanently enjoined from (a) doing any act or taking any action interfering or tending to interfere with these proceedings or with the payment and denial of payment of fees and expenses as determined and ordered by the Commission or with the carrying out of the portions of said Amended Plan relating to payment and denial of payment of fees and expenses or with compliance with said Orders of the Commission with respect thereto, and (b) paying or receiving any fees or expenses approval of which was denied in said Orders of the Commission, including the commencement or prosecution of any action, suit, or proceeding, at law or in equity or under any statute, in any court or before any executive or administrative officer, commission, or tribunal, other than such proceedings before the Commission or this Court as may be appropriate (R-3, 235) under the Act and the Rules and Regulations promulgated thereunder, and such review, if any, in an appropriate appellate court of the United States as may be provided by law.

By THE COURT:

s/ JOHN W. CLANCY,  
United States District Judge.

Dated: February 17, 1953.

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(R-3, 236) UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

*In the Matter of*  
ELECTRIC POWER & LIGHT CORPORATION  
ELECTRIC BOND AND SHARE COMPANY

Civil Action  
No. 49-347

NOTICE OF APPEAL.

Notice is hereby given that Drexel & Co., a fee claimant in the above-entitled action whose requested fee was

denied in part, hereby appeals to the United States Court of Appeals for the Second Circuit from those portions of the order entered by the United States District Court for the Southern District of New York in said action on February 17, 1953, which (a) found and concluded that the findings of fact and conclusions of law embodied in the findings, opinion and order of the Securities and Exchange Commission dated April 21, 1952, insofar as they relate to the requested fee of Drexel & Co. and its payment by Electric Bond and Share Company, were supported by substantial evidence and were arrived at in accordance with legal standards; (b) approved the denial of payment of such fee as fair and equitable and as appropriate to effectuate the provisions of Section 11 of the Act and overruled the objections to the portion of the Commission's supplemental application relating thereto; (c) enforced the denial of the payment of such fee; and (d) enjoined Electric Bond and Share Company and Drexel & Co. from doing any act or taking any action tending to interfere with the denial of payment of such fee and from paying or receiving such fee.

April 9, 1953

**JOHN R. BURTON**

---

John R. Burton

2 Rector Street, New York 6, N. Y.

**THOMAS REATH**

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Thomas Reath

**JOHN MULFORD**

---

John Mulford

Drinker Biddle & Reath  
117 S. 17th Street, Philadelphia 3, Pa.  
Counsel for Drexel & Co.

(R-3, 237) UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

<i>In the Matter of</i>  ELECTRIC POWER & LIGHT CORPORATION ELECTRIC BOND AND SHARE COMPANY	}	Civil Action No. 49-347
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### NOTICE OF APPEAL.

Notice is hereby given that Christian A. Johnson and Cameron Biewend individually and as a Committee for the Holders of the Common Stock of Electric Power & Light Corporation, hereby appeal to the United States Second Circuit Court of Appeals from the order of the United States District Court for the Southern District of New York dated February 17, 1953 in *In the Matter of Electric Power & Light Corporation, Electric Bond and Share Company et al.* Civil Action No. 49-347, (1) approving the payment and denial of payment of expert and legal fees and expenses as determined by the Securities and Exchange Commission, applied for by appellants on behalf of themselves, their counsel and expert witness, (2) ordering enforcement of said payment and denial and (3) enjoining appellants and all other persons from interfering with said payment and denial of fees and expenses.

BURNS, BLAKE & RICH

By

JOHN J. BURNS.

Attorney for Appellants Christian A. Johnson and Cameron Biewend individually and as a Committee for the Holders of the Common Stock of Electric Power & Light Corporation.

One State Street

Boston, Massachusetts

JOHN J. BURNS

40 Wall Street

New York 5, New York

COPIES TO:

DAVID JAMES, ESQ.

MESSRS. CAHILL, GORDON, ZACHRY & REINDEL

63 Wall Street

New York, New York

(R-3, 238)

DRINKER, BIDDLE & REATH, ESQS.

117 South 17th Street

Philadelphia, Pennsylvania

MYRON S. ISAACS, ESQ.

Chief Counsel

Division of Public Utilities

Securities and Exchange Commission

425 Second Street, N. W.

Washington, D. C.

ISRAEL BECKHARDT, ESQ.

18 East 41st Street

New York, New York

(R-3, 239)

In the

DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 49-347

*In the Matter of*

ELECTRIC POWER & LIGHT CORPORATION

STATEMENT OF POINTS ON WHICH  
APPELLANTS RELY.

The Appellants, Christian A. Johnson and Cameron Biewend, individually and as a Committee of Common Stockholders of Electric Power & Light Corporation, will rely on the Points below on appeal from the order of the District Court, as hereinafter noted.

1. The District Court erred in approving and enforcing the payment and denial of payment of fees and expenses, as determined and ordered by the Securities and Exchange Commission, in so far as said approval relates to the fees and expenses applied for by appellants on behalf of themselves, counsel and expert witness.

2. The District Court erred in overruling the following objections to the order, Findings and Opinion of the Securities and Exchange Commission and to the enforcement of the Amended Plan of Reorganization, namely:

“1. Objection is made to disallowance by the Securities and Exchange Commission (hereinafter called S.E.C. or Commission) of the following fees for which application has been made to the Commission:

	Fee
Burns, Blake & Rich (Counsel for Committee) .....	\$26,475.00
Expenses and Disbursements of the Committee (in payment of \$5000 to Becker, Berman & Odell as a fee and \$2,734.58 to P. Harold Peterson on account) ...	7,734.58
P. Harold Peterson (Financial Expert for Committee) .....	9,454.42

(R-3, 240) “2. Objection is made to the Finding of the Commission that the failure of the Committee to change any part of the Plan of Reorganization of Electric Power & Light Corporation finally approved is sufficient basis for disallowance of the fees of P. Harold Peterson entirely and disallowance of the major share of the fee of Burns, Blake & Rich.

“3. Objection is made to the retroactive change by the Commission of its pronounced policy of granting reasonable fees to Committees performing competent work, regardless of any change in the final plan.

"4. Objection is taken to the failure of the Commission to consider the fact that the valuations of the Committee and its expert have now been proved to be substantially correct, while those of the Commission have proved to be erroneous.

"5. Objection is taken to the following finding of fact of the Commission, as having no basis in the record:

' \* \* \* it is significant that the allocation proposals made by the Johnson-Biewend Committee would have resulted in the \$7 Preferred Stock receiving securities and cash of a present value of between \$85 and \$95 in full compensation for their liquidation preference of \$189 and the redemption price of \$199.'

"6 Objection is taken to the finding that the work of the law firm of Becker, Berman & Odell resulted in duplication of services."

By their attorneys,

**BURNS, BLAKE & RICH**

---

Harold B. Dondis

Attorneys for Christian A. Johnson  
and Cameron Biewend individually  
and as a Committee of  
Common Stockholders of Electric  
Power & Light Corporation.

May 5, 1953



(R-3, 241) UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

*In the Matter of*  
ELECTRIC POWER & LIGHT CORPORATION  
ELECTRIC BOND AND SHARE COMPANY

Civil Action  
No. 49-347

### STATEMENT OF POINTS.

The following are the points on which Drexel & Co., appellant, intends to rely on its appeal:

1. Approval of the Securities and Exchange Commission is not required of the amount of a fee proposed to be paid by a solvent corporation not in reorganization to its financial expert for services rendered to it in connection with a plan of one of its subsidiaries for the liquidation and dissolution of such subsidiary under Section 11(e) of the Public Utility Holding Company Act of 1935.

2. The payment of such fee by such corporation, not being a part of the plan of the subsidiary, may not be denied by the Commission or enjoined by the Court below in enforcing such plan.

3. The reduction of the proposed fee from \$100,000 to \$50,000, directed by the Commission and approved by the court below, is not supported by substantial evidence in the light of the record as a whole, and is arbitrary, capricious, an abuse of discretion, and not in accordance with law.

June 11, 1953

JOHN MULFORD

John Mulford

THOMAS REATH

Thomas Reath

Drinker Biddle & Reath  
Counsel for Drexel & Co.  
117 S. 17th Street,  
Philadelphia 3, Pa.

(R-3, 242) *Endorsed.*—UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK, Civil Action No. 49-347, In the Matter of, ELECTRIC POWER & LIGHT CORPORATION; ELECTRIC BOND AND SHARE COMPANY, STATEMENT OF POINTS, JOHN MULFORD, ESQ., THOMAS REATH, ESQ., DRINKER BIDDLE & REATH, Attorneys-at-Law, 117 South 17th Street, Philadelphia 3, Pa.

(R-3, 243) UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

<p style="text-align: center;"><i>In the Matter of</i></p> <p>ELECTRIC POWER &amp; LIGHT CORPORATION ELECTRIC BOND AND SHARE COMPANY</p>	} Civil Action No. 49-347
--	------------------------------

STIPULATION AS TO RECORD ON APPEAL.

Counsel for Drexel & Co., Appellant, counsel for Christian A. Johnson and Cameron Biewend individually and as a Committee for the Holders of the Common Stock of Electric Power & Light Corporation, Appellant, counsel for the Securities and Exchange Commission, Appellee, counsel for Electric Power & Light Corporation, Appellee, and counsel for Electric Bond and Share Company, Appellee, in the separate appeals of said appellants in the above entitled proceeding to the United States Court of Appeals for the Second Circuit, hereby designate the following parts of the record, proceedings and evidence as the parts thereof to be the joint record on said appeals, and stipulate that the preceding volumes Nos. 1, 1A, and 2 and this volume, No. 3, contain accurate copies thereof:

1. The docket entries required by Rule 15(b) of the United States Court of Appeals for the Second Circuit.

2. Plan for compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act, of 1935 dated November 5, 1945.

3. Plan for compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act of 1935 dated May 3, 1946.

(R-3, 244) 4. Plan of Electric Bond and Share Company for compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act of 1935 dated May 9, 1946.

5. Joint plan of Electric Bond and Share Company and Electric Power & Light Corporation for compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act of 1935 dated July 1, 1946.

6. Plan for compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act of 1935 dated March 24, 1948.

7. Official report of proceedings before the Securities and Exchange Commission in this proceeding, April 9, 1946, page 1266, line 11, to page 1273, line 8.

8. Application of Electric Bond and Share Company re acquisition of securities and settlement of claims filed in connection with the plan aforesaid dated March 24, 1948, Docket No. 70-1806.

9. The findings and opinion of the Securities and Exchange Commission on said plan dated March 2, 1949 (Holding Company Act of 1935 Release No. 8889).

10. Amendment of said plan filed by Electric Power & Light Corporation dated March 3, 1949.

11. Declaration pursuant to Rule U-62 by Christian A. Johnson and Cameron Biewend individually and as a Committee for the Holders of the Common Stock of Electric Power & Light Corporation, dated April 9, 1948, as amended on April 13, 1948, April 16, 1948, April 20, 1948, April 28, 1948, June 30, 1948 and July 6, 1948, including all exhibits thereto.

(R-3, 245) 12. Official report of the Securities and Exchange Commission, pages 5361-5401, 5430-5740, and 5780-5794, containing all testimony of P. Harold Peterson and Christian A. Johnson.

13. Exhibits numbered B-J, Exhibits Nos. 1 through 21, introduced in evidence before the Securities and Exchange Commission.

14. Order of Securities and Exchange Commission dated March 7, 1949, approving of said plan as amended (Holding Company Act of 1935 Release No. 8906),

15. Order of the District Court of the United States for the Southern District of New York dated April 22, 1949, Civil Action No. 49-347, approving and enforcing plan.

16. Application by the Committee for the Holders of the Common Stock for reimbursement of expenses and allowance of fees, dated December 16, 1949.

17. Exhibits A through D attached to the application by the Committee for the Holders of the Common Stock for reimbursement of expenses and allowance of fees, dated December 16, 1949.

18. Statement of objections of Christian A. Johnson and Cameron Biewend individually and as a Committee for the Holders of the Common Stock of Electric Power & Light Corporation, dated September 18, 1952, filed in the U. S. District Court. (Accompanying brief is omitted.)

19. Petition of Electric Bond and Share Company before the Securities and Exchange Commission for approval of payment of fees and expenses, dated December 20, 1949.

20. Petition of Drexel & Co. before the Securities and Exchange Commission for approval of fee for services on behalf of Electric Bond and Share Company, dated April 3, 1950.

(R-3, 246) 21. Statement descriptive of services of Drexel & Co. annexed to the petition by Drexel & Co. aforesaid.

22. Official report of proceedings before the Securities and Exchange Commission on April 4, 1950, and April 5, 1950, pages 1-513, with the corrections listed in Exhibit A hereto.

23. Findings, opinion and order of the Securities and Exchange Commission regarding fees arising out of Section 11(e) proceedings dated April 21, 1952 (Holding Company Act of 1935 Release No. 11175).

24. Supplemental application of the Securities and Exchange Commission to the United States District Court for the Southern District of New York, Civil Action No. 49-347, dated June 19, 1952, excluding exhibits thereto.

25. Statement of objections dated September 11, 1952, of Drexel & Co. to supplemental application of the Securities and Exchange Commission filed June 20, 1952, including exhibits thereto.

26. Opinion of the United States District Court for the Southern District of New York on such application, dated December 23, 1952.

27. Order of the United States District Court for the Southern District of New York on said application, dated February 17, 1953.

28. Notice of appeal of Drexel & Co., dated April 9, 1953.

29. Notice of appeal of Christian A. Johnson and Cameron Biewend, individually and as a Committee for the Holders of the Common Stock, filed April 10, 1953.

(R-3, 247) 30. The statement of points by the appellants, Christian A. Johnson and Cameron Biewend, individually and as a Committee for the Holders of the Common Stock, on which it intends to rely on appeal, dated May 5, 1953.

31. The statement by the appellant, Drexel & Co., of the points on which it intends to rely, dated June 11, 1953.

32. This stipulation.

It is further stipulated that the Opinion of the United States District Court for the Southern District of New York dated April 13, 1949, approving the plan; the Order of the United States Court of Appeals for the Second Circuit dated May 5, 1949, denying motions to stay the consummation of the plan; the *per curiam* Memorandum of the United States Supreme Court dated May 16, 1949, denying petitions for a stay, together with the dissenting Opinion of Mr. Justice Frankfurter and Mr. Justice Murphy; and the Opinion of the United States Court of Appeals for the Second Circuit dated August 9, 1949, affirming the order of the United States District Court dated April 13, 1949, and dismissing an appeal therefrom, all as included in the record in Docket Number 21374, United States Court of Appeals for the Second Circuit in the Matter of Electric Power & Light Corporation et al., be and they hereby are deemed to be included in the joint record on said appeals, without physical incorporation in said volumes.

JOHN MULFORD

Counsel for Drexel & Co.

BURNS, BLAKE & RICH

by JOHN J. BURNS

Counsel for Christian A. Johnson  
and Cameron Biewend individually  
and as a Committee for  
the Holders of the Common  
Stock of Electric Power & Light  
Corporation

MYRON S. ISAACS

Counsel for Securities and  
Exchange Commission

DANIEL JAMES

Counsel for Electric Power &  
Light Corporation

JAMES S. REGAN

Counsel for Electric Bond  
and Share Company



(R-3, 248)

## EXHIBIT A.

MEMORANDUM OF CORRECTIONS IN TRANSCRIPT OF RECORD  
BEFORE THE SECURITIES AND EXCHANGE COMMISSION IN  
THE MATTER OF ELECTRIC POWER & LIGHT CORPORATION,  
DOCKET NO. 54-139, 59-12, WASHINGTON, D. C., APRIL 5,  
1950, PAGES 233-325, INCLUSIVE, CONSTITUTING A POR-  
TION OF THE TESTIMONY OF EDWARD HOPKINSON, JR.

Page 233, line 12, after "were" insert "not".

Page 248, line 13, change "expired" to "extended".

Page 248, line 16, change "somthat" to "somehow".

Page 250, line 19, change "refuse" to "refused", and  
after "what" insert "Bond and Share".

Page 259, line 21, change "in" to "than".

Page 265, line 11, after "was" insert "not".

Page 265, line 15, change "and" to "until".

Page 273, line 25, change "taking" to "taken".

Page 288, line 24, change "He" to "We".

Page 294, line 5, change "18" to "81".

Page 306, line 25, change "allegations" to "allocations".

Page 325, line 3, change "earned" to "end."

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER  
TERM, 1953

No. 82

(Argued December 11, 1953. Decided February 25, 1954)

Docket No. 22766

In the Matter of ELECTRIC POWER &amp; LIGHT CORPORATION et al.

Before CHASE, Chief Judge, SWAN and MEDINA, Circuit Judges

Appeals from an order of the District Court for the Southern District of New York confirming an order of the Securities and Exchange Commission fixing allowances for fees and expenses in a reorganization under Sec. 11(e) of the Public Utility Holding Company Act of 1935. *Clancy, Judge*. Reversed in part and affirmed in part.

CAHILL, GORDON, ZACHRY & REINDEL, Attorneys for Electric Power & Light Corporation, Daniel James, of Counsel.

DRINKER, BIDDLE & REATH, JAMES S. REGAL, Counsel for Drexel Co. Thomas Reath, John Mulford, of Counsel.

JOHN J. BURNS, HAROLD B. DONDIS, Attorneys for Appellants, Christian A. Johnson and Cameron Biewend individually and as a Committee for the Holders of the Common Stock of Electric Power & Light Corporation.

CHASE, Chief Judge:

Electric Power & Light Corporation, to be called Electric, was one of the subsidiary companies of Electric Bond and Share Company, to be called Bond and Share. Both became registered holding companies under the Public Utility Holding Company Act of 1935, 15 U. S. C. § 79, *et seq.*, and in appropriate proceedings under that statute plans were filed with the Securities and Exchange Commission for the dissolution of Electric. The one approved by the Commission was enforced by an order of the District Court which we affirmed. *In re Electric Power & Light Corporation*, 2 Cir., 176 F. 2d 687. We will not repeat what was there said respecting the provisions of the plan and add only that jurisdiction was reserved by the Commission to determine what fees and expenses which had been, or would be, incurred with respect to the adoption and enforcement of the plan were reasonable to be allowed and how they should be allocated. The plan, as amended and confirmed, provided that, " \* \* \*, Electric acknowledges the jurisdiction of the Commission to pass upon fees and expenses of parties and persons

who have been granted participation herein and their counsel, agents and employees, and agrees to pay such fees and expenses as the Commission shall find it appropriate to pay and as shall have been approved for payment by Electric by order of the Commission or in the event of judicial review, by final judgment of the court."

When the plan had been consummated, applications were made to the Commission for the allowance of fees well in excess of \$1,000,000 and for expenses running to about \$70,000. Among such applications was that of appellant Drexel & Company for \$100,000.

It was for services Drexel & Company had performed, over a period of about three years, for Bond and Share upon the latter's request for expert financial advice to assist it in protecting its substantial investment in the securities of Electric in connection with the dissolution of that corporation pursuant to Sec. 11(c) of the Act. There were other applicants for fee allowances on account of services performed for Bond and Share in Electric's dissolution proceedings and for some expenses, as well as an application for allowances by Bond and Share itself. After hearing, the Commission denied them all and the applicants acquiesced in that. It did, however, order Bond and Share to make payments to such applicants in amounts determined by the Commission, the fee of Drexel & Company being reduced to \$50,000 although Bond and Share made known its own belief that the \$100,000 fee was fair and reasonable and its desire to pay that amount in accordance with its agreement with Drexel & Company to make the payment.

The other appellants are Christian A. Johnson and Cameron Riewend individually and as a committee of the common stockholders of Electric. They applied for an allowance for counsel fees of \$35,975 and expenses. The allowance made was \$9,500 plus expenses. They had also applied for an allowance of \$5,000, for the fees of another firm of attorneys they had employed, and also for a fee of \$2,734.28 for an expert accountant, who, himself, applied for additional compensation of \$9,454.42 for services performed for the appellants. These last mentioned applications were all denied.

The Commission made a supplemental application to the district court for the approval of its order allowing and disallowing applications for fees and expenses and for a protective injunction. These appellants filed objections. After hearing, the court overruled the objections, confirmed the order of the Commission and enjoined the collection and the payment of fees and expenses except as provided in the order.

The first issue raised by the appeal of Drexel & Company presents an interesting question as to which no direct decision has been called to our attention or found by us. It is whether the Commis-

sion has jurisdiction to determine the amount which shall be paid by Bond and Share, not by Electric, to the financial adviser which Bond and Share employed to assist it in these proceedings. Bond and Share has taken the position that, as it is a solvent corporation whose business affairs are conducted by its own management, the amount of the expenses it saw fit to incur in the protection of its interest in the Sec. 11(c) proceedings for the reorganization of Electric are of right to be determined by itself and what it pays from its own funds in discharge of such obligations is not subject to control by the Commission. That of the Commission is that in a proceeding under Sec. 11(c) of the Act it is by statute given jurisdiction to supervise all fees and expenses which are paid by a registered holding company whether they be paid by the company reorganized or another registered holding company of which the reorganized one is a subsidiary. The reasoning is that as Electric was a subsidiary of Bond and Share which was required to comply with the provisions of the Act, its dissolution in these proceedings was a step taken, and necessarily taken, in bringing Bond and Share into compliance with the statute. And so, the argument runs, the provisions of Sec. 11(c) giving the Commission the power, and imposing upon it the duty, to determine whether a plan is fair and equitable to those affected by it gives it jurisdiction to determine what allowances shall be made for fees and expenses. *In re Electric Bond and Share Co.* (S. D. N. Y.), 80 F. Supp. 795. It continues with the assertion that within the group to be considered as persons affected by the plan are not only those with security holdings in the company being reorganized but also those having such holdings in a company of which the reorganized one is a subsidiary. An appreciable number of instances in which it has so acted without objection have been called to our attention.

Furthermore, it has recalled that in *American Power and Light Co. v. S. E. C.*, 325 U. S. 385, it was held that under Sec. 24(c) a stockholder of Bond and Share was a "person aggrieved" by an order of the Commission in proceedings for the reorganization of a subsidiary of Bond and Share. From this it is said to follow that because the term "persons affected" as used in Sec. 11(c) must be as broad as "person aggrieved" as used in Sec. 24(c) it should now be held to include the stockholders of Bond and Share.

Though the argument tends toward persuasion, there are other considerations which appear to be so much more weighty as to be controlling. Nowhere in Sec. 11(c) are fees and expenses, paid in connection with a proceeding thereunder expressly put within the control of the Commission. Indeed, the subject is not mentioned at all. Whatever fees and expenses are to be paid by the reorganized company serve to decrease its assets and persons who have an interest in such assets are, of course, affected by a plan

which provides for payments which diminish their amount. Thus it was plainly within the jurisdiction of the Commission to deny in the exercise of sound discretion the application of Drexel & Company, for the allowance of its fee to be paid by Electric for services rendered Bond and Share, and no one questions that. As much is true, of course, in respect to the application of Bond and Share for allowances to be paid by Electric. But what fees Bond and Share may pay Drexel & Company, will not affect the asset position of Electric in the slightest. They will not affect the stockholders of Electric and so will not affect the stockholders of Bond and Share in any respect by reason of Bond and Share's being a stockholder of Electric, and Electric's being a subsidiary of Bond and Share. True such payment will "affect" the stockholders of Bond and Share but not as a result of the provisions of Electric's plan and only as such stockholders are "affected" by the expenses which Bond and Share incurs in its own business and pays out of its own funds. In other words, the fee to be paid Drexel & Company by Bond and Share is but a business expense of Bond and Share itself like, for instance, what it may have paid in salaries to its own staff for services performed for it in connection with the reorganization of Electric or otherwise to protect its own interests and, not being an obligation to be discharged by Electric directly or indirectly, the amount of it is an irrelevant factor in determining whether Electric's plan is fair and equitable to those persons who are affected by it.

It is also argued that under Sec. 114(c) the Commission has jurisdiction to determine the fee to be paid Drexel & Company by Bond and Share, and indeed there are in *S. E. C. v. Cogan*, 9 Cir., 201 F. 2d 78, 81 and in *Halstead v. S. E. C.*, D. C. Cir., 182 F. 2d 660, 663, expressions broad enough to give support to that contention. They should, however, be read in the light of the issues being there decided. In the *Cogan* case the fairness of the plan was questioned because it provided for the payment by the reorganized company of a fee to counsel for a stockholder's committee on the ground of an alleged conflict of interest on the part of such attorneys. In the *Halstead* case the issue was the power of the Commission to prevent the solicitation by a stockholder's committee of contributions to pay the fees of its counsel where it was announced by the committee that it would ultimately seek payment of the fees solely out of the estate of the company being reorganized. Thus in each of the two instances the eventual payment of the fees might reduce what persons affected by the plan would otherwise receive for their interest in the reorganized company.

The opening sentence of subsection (c) begins as follows: "In any proceeding in a court of the United States whether under this section or otherwise, in which a receiver or trustee is appointed for

any registered holding company or any subsidiary company thereof." Then the subsection provides for the appointment of the Commission as sole trustee or receiver, whether or not a trustee or receiver had previously been appointed, though the Commission may not be appointed "without its express consent," nor may the appointment of "any person other than the Commission" be made without first "notifying the Commission and giving it an opportunity to be heard." Then follow provisions for the approval of the plan by the Commission, after an opportunity for hearing before submission of the plan to the court, "in any such proceeding," and for the proposal of "any such reorganization plan" in the first instance by the Commission or "by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization." Finally the subsection ends with this sentence: "The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any and all fees, expenses and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission."

The appellant contends that the provisions for the approval of fees, expenses and remuneration in this subsection is limited by the words "in any such proceeding" to those in which a trustee or receiver should be appointed and, since there was no such appointment in this proceeding, the subsection does not here apply. It is to be noticed that subsection (f) is not confined to Sec. 11 proceedings but applies to any proceeding in any court of the United States in which a trustee or receiver is appointed for any registered holding Company, or any subsidiary thereof. As to that the words "whether under this section or otherwise" leave no doubt whatever. Thus the only words of limitation are "in which a trustee or receiver is appointed for any registered holding Company, or any subsidiary thereof," and the phrase "in any such proceeding" found in the last sentence in the subsection can refer only to a proceeding so described by the limiting words. The same words are used earlier in the subsection to make it plain that whenever a trustee or receiver has been appointed for any registered holding company, or its subsidiary, in any proceeding in the federal courts no reorganization plan may emerge from the proceeding and become effective "unless such plan shall have been approved by the Commission" after hearing, if it wants to have one, prior to the submission of the plan to the court. And finally, even where the proceeding had been as closely controlled by the court as it would be when a court appointed trustee or receiver was an active participant in it, such supervision



was supplemented by making all fees, expenses and remuneration paid in connection with any reorganization, dissolution liquidation, bankruptcy or receivership in which the end result was an effective reorganization plan subject to the approval of the Commission, provided it so required by rules, regulations or by order which it might deem necessary or appropriate in the public interest or to protect investors or consumers. It was to make this clear that the provision for Commission approval of fees, expenses and remuneration was put into subsection (f) and had Congress intended to make that provision applicable to proceedings other than the particular kind described in the subsection it, presumably, would have omitted the word "such" from the phrase "in any such proceeding" in the last sentence of the subsection. Now to so construe the provision as though the word "such" were not in the phrase would amount to a broadening as far reaching as the scope of the words "in any proceeding."

If we assume, *arguendo*, that such a construction is permissible, the provision does not even then reach the fee to be paid this appellant unless the words "any and all fees, expenses and remuneration to whomsoever paid, *in connection with*" (emphasis added) include payments which are not made by the company whose attempted reorganization is the object of the proceeding, or which in any way change the financial impact of the plan which is the outcome of the proceedings, whatever that may be, upon persons having a bona fide interest in it. We are not prepared so to construe them for the reasons stated in our discussion of the jurisdiction of the Commission in respect to the control of fees and expenses under subsection (e) and, as the payment of the fee which Bond and Share has agreed to pay the appellant is a business expense of that company and not an obligation of, or one to be imposed upon, Electric, we hold that it is not a fee paid "in connection with" the proceeding for the reorganization of Electric within the meaning of the just quoted phrase as used in subsection (f).

The disallowance in part of the application of Johnson and Biewend and of the Johnson-Biewend Committee for fees and expenses presents a different question. The appellants sought payment out of the estate of Electric and the Commission's jurisdiction is clear.

The sole question is whether the Commission's determinations as to whether the fees and expenses were to be allowed out of the estate of Electric and, if so, in what amount are in accord with proper legal standards and are supported by substantial evidence. Cf. *S. E. C. v. Central Illinois Securities Corp.*, 338 U. S. 96. As the Commission has had the advantage of intimate knowledge of the whole proceedings, which is an invaluable guide in determining the value of services and the reasonable need for the incurrence of

expenses, its findings, though not conclusive, should be given much weight. Cf. *Finn v. Childs*, 2 Cir., 181 F. 2d 431, 435.

In general the activities of these appellants in the dissolution of Electric consisted of opposing the plan finally adopted. They did not submit a plan of their own, caused no changes in the plan, were unsuccessful at all stages of the proceeding before both the Commission and the courts, and apparently made no contribution as an efficient "watchdog" for the common stockholders. Their objections to the plan were that because of faulty predictions of future values it provided for improper allocations of securities among those whose equities in Electric were recognized and compensated for; and that the Commission improperly evaluated the future earning power of Electric's assets. See *In re Electric Power & Light Corporation*, 2 Cir., 176 F. 2d 687. The primary basis for the objections is found in the testimony of an accountant, P. Harold Peterson, as to these matters before the Commission.

The Commission found that Mr. Peterson was of no aid in the proceedings; that his estimates as to the earning power of the assets of Electric and as to the allocation of securities were based on faulty analysis and fallacious premises; and further that his "services were not essential or even useful to the protection of the common stockholders."

The appellants assert that the contrary is shown by this record in that the predictions of Mr. Peterson have turned out to be more accurate than those upon which the plan was in part based. While that is questioned by the Commission and by Electric, we will assume for present purposes that it is so. Nevertheless, it does not necessarily follow that because time has proved his predictions to have been more accurate than those of others, his testimony was a valuable contribution for which the appellants should be compensated. It is common knowledge that an intelligent estimate may turn out to be less accurate than an uninformed guess, and a comparatively higher ultimate accuracy of a rejected forecast does not necessarily show that it was a contribution of any recognizable value at the time it was made available. Where, as here, the plan for dissolution required a prediction for future values the Commission properly based its decisions on the testimony which at the time seemed to be the most likely to be accurate, by giving effect to the premises upon which the testimony was based and its analytical quality.

That being so, the appellants' reliance upon the alleged accuracy of Mr. Peterson's opinion testimony is futile to show error in the disposition of their applications. It is less than enough to persuade us that the Commission's findings lack the support of substantial evidence.

The Commission's determination as to the allowance of fees to

the law firms of Burns, Blake & Rich; and Becker, Berman & Odell should also be upheld. The fees of the first mentioned firm were reduced and of the other disallowed. The reduction was made because of lack of success and failure to contribute more substantially to the plan, and while they are not the sole criteria for fixing fees allowable in these cases, a complete lack of success in getting plan compliance with views advanced in complicated and extensive proceedings is certainly good ground for the allowance of only modest fees out of the estate of the reorganized company. A finding to such effect was justifiably made and the fee of Burns, Blake & Rich was accordingly set at a modest level.

The fee of Becker, Berman & Odell was completely disallowed because the efforts of that firm were unnecessarily duplicative. In this determination the Commission is well supported. Burns, Blake & Rich (who retained Becker, Berman & Odell when the proceedings were in the District Court) served at the administrative level and continued to do so in the courts. Some members of that firm were members of the New York Bar, including the senior partner who had an office in New York. They represented the Committee in proceedings in Washington, and the Commission was justified in concluding that there was no good reason why they could not adequately have done so in the court proceedings in New York without the assistance of other counsel.

As to the fee of Drexel & Company the order is reversed for lack of jurisdiction in the Commission and otherwise it is affirmed.

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In the Matter of ELECTRIC POWER & LIGHT CORP., ELECTRIC BOND & SHARE CO.,

## JUDGMENT

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Filed Feb. 25, 1954, A. Daniel Fusaro, Clerk.

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 25th day of February one thousand nine hundred and fifty-four.

Present: HON. HARRIE B. CHASE, Chief Judge, HON. THOMAS W. SWAN, HON. HAROLD R. MEDINA, Circuit Judges.

In the Matter of ELECTRIC POWER & LIGHT CORP., ELECTRIC BOND & SHARE CO.,

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed as to the fee of Drexel & Company for lack of jurisdiction in the Commission and otherwise affirmed in accordance with the opinion of this Court; with costs to appellant Drexel & Company.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

(S.) A. DANIEL FUSARO,  
*Clerk*

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 22766

## IN THE MATTER OF ELECTRIC POWER &amp; LIGHT CORPORATION, ELECTRIC BOND AND SHARE COMPANY

Petition for Rehearing of Christian A. Johnson and Cameron Biewend, Individually and as a Committee for the Common Stockholders of Electric Power & Light Corporation.

Christian A. Johnson and Cameron Biewend, individually and as a Committee for the common stockholders of Electric Power & Light Corporation, respectfully request reconsideration of the Court's order affirming the orders of the District Court and Securities and Exchange Commission insofar as they relate to denial of compensation of the Committee's experts and counsel. In support of this petition for rehearing the Committee respectfully represents as follows:

The Court's opinion states that the Committee submitted no Plan to the Commission. The Committee did indeed submit a Plan which required hundreds of hours of preparation and comment before the Commission. In fact, the Committee's Plan was the only alternative Plan before the Commission. The Commission in fact gave the Plan thorough consideration by discussing each separate point raised therein by the Committee in its decision approving the Company Plan. In its findings on fees, the Commission referred to the Committee's Plan (R. 240a-241a), and as pointed out by the Committee's brief (sec. I (c), p. 17), erred in stating that the Plan's proposed allocation was inadequate.

This fact indicates that this Court has overlooked the nature of the Committee's work in at least two aspects of the case:

*The Committee's estimates were not an "uninformed guess," and the Commission did not find that they were.*

This Court stated in its opinion concerning the Committee's expert, Peterson:

"It is common knowledge that an intelligent estimate may turn out to be less accurate than an 'uninformed guess,' and a comparatively higher ultimate accuracy of a rejected forecast does not necessarily show that it was a contribution of any recognizable value at the time it was made available."

The characterization of Peterson's testimony as an "uninformed guess" has no support either in his testimony or in the Securities and Exchange Commission's findings. Peterson is an engineer and financial analyst and not an accountant as stated in this Court's opinion

(see R. 244a). *The Commission made no finding that Peterson was not qualified as a witness and none that he made an "uninformed guess."* The Commission did find that Peterson's analyses were incorrect, but not that they were based on lack of information or improper judgment (R. 244a). That the Commission has now been proved to be in error in finding that Petersen erred in his estimates has been abundantly demonstrated in the Committee's brief.

Furthermore, if there were ever any question about the Commission's error in challenging Peterson's analyses, there can be little now. The values of Middle South and United Gas Corporation have continued to increase since this case was argued. Both United Gas and Middle South are now selling (on the New York Stock Exchange) at \$28-\$28.50 per share. The Commission's valuation of the common stock was 90 million dollars (*cf.* Brief of Committee, p. 22); since the preferreds have been overpaid by 100 million dollars, the correct valuation of the common stock should have been at least 180 million dollars. *These values show that the common's participation in the Plan should have been doubled.*

Although the Commission has never commented on the figures presented by this Committee to the District Court and this Honorable Court, it has never denied their verity. Undoubtedly it would have hastened to make such a denial if the figures were incorrect.

We respectfully submit that the record itself does not indicate lack of preparation by the Committee that would be implied by the use of the term "uninformed guess" even if the Commission has made such a finding. As previously pointed out, the Plan proved to be unsound for the very reasons advanced by the Committee, namely, that the Commission in comparing the securities with unseasoned stocks were ignoring the growth of the companies and their dividend paying ability in the future. The Committee's brief treats this subject at length (Brief, pp. 12 *et seq.*). Yet to say that this was an uninformed guess is to treat the present circumstances as intrusive coincidence.

The fact of the matter is that the record shows an elaborate preparation on the part of the Committee. The testimony of Peterson (Transcript of Testimony, pp. 5361-5383, 5431-5616, 5620-5741) clearly demonstrates that Peterson was thoroughly acquainted with the facts of the case. The Committee's expert and counsel spent over three thousand hours on their Plan, on presentation of testimony, preparation of exhibits and on briefs and memoranda to the Court. No others represented the common shareholders in all aspects of the case, and the Commission's opinion shows that the Committee was the only party in the case to take issue point by point with the Plan (Opinion re Plan, vol. I, pp. 131-137, 151-153, 164-165, 171, 185-186). Electric Power & Light's assets totaled 600 million dollars. The problems facing any Committee, which of necessity is unconnected with management, were staggering.



It is respectfully submitted that if in this case there is no occasion to grant compensation to experts who were unable to cause the Plan to be changed, then there will be very little occasion in the future to do so, and the result must be that the so-called "Benefit" rule, which requires success as the sole standard of reward, is in effect restored. Committees must then operate at the risk of considerable personal sacrifice.

We respectfully urge upon this Court that in view of the fact that the Commission made no findings that the position of the Committee was unreasonable, or that its work was not competent, and also in view of the fact that the Committee's arguments against the Plan have now been proved to be spectacularly sound, it is not consistent with elementary fairness to dismiss the Committee's work as uninformed and worthless or to so assume in denying it compensation.

Respectfully submitted,

CHRISTIAN A. JOHNSON and  
CAMERON BIEWEND,  
*Individually and as a Committee*  
*for the Common Stockholders,*  
*By their Attorney,*  
(S.) JOHN J. BURNS

COMMONWEALTH OF MASSACHUSETTS,  
County of Suffolk.

John J. Burns, of lawful age, being duly sworn, says that he is one of the attorneys for petitioners herein; that he has prepared and read the foregoing petition; that it is not filed for purposes of delay, and that the matters and things contained therein are true, as he verily believes.

(S.) JOHN J. BURNS

Subscribed and sworn to before me this 10th day of March, 1953.

(S.) HAROLD B. DONDIS,  
*Notary Public.*

[SEAL]

## UNITED STATES COURT OF APPEALS, FOR THE SECOND CIRCUIT

In the Matter of ELECTRIC POWER & LIGHT CORPORATION, ELECTRIC  
BOND AND SHARE COMPANY.

Before: CHASE, Chief Judge, SWAN and MEDINA, Circuit Judges

Petition of Christian A. Johnson and Cameron Biewend, individually, and as a Committee for the Common Stockholders of Electric Power & Light Corporation for rehearing.

JOHN J. BURNS,  
*Attorney.*

PER CURIAM:

The petition for rehearing is denied.

UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

Filed March 23, 1954, A. Daniel Fusaro, Clerk.

UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

In the Matter of ELECTRIC POWER & LIGHT CORPORATION, ELECTRIC  
BOND AND SHARE COMPANY.

## ORDER

UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

Filed March 23, 1954, A. Daniel Fusaro, Clerk.

UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 23rd day of March —, one thousand nine hundred and fifty-four.

Present: Hon. HARRIE B. CHASE, Chief Judge, Hon. THOMAS W. SWAN, Hon. HAROLD R. MEDINA, Circuit Judges.

In the Matter of ELECTRIC POWER & LIGHT CORPORATION, ELECTRIC  
BOND AND SHARE COMPANY.

A petition for a rehearing having been filed herein by counsel for the appellants, Christian A. Johnson and Cameron Biewend, individually, and as a Committee, etc.,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

(S.) A. DANIEL FUSARO,  
*Clerk.*

## UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF NEW YORK

I, A. Daniel Fusaro, Clerk of the United States Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1a to 327a, inclusive, contain a true and complete transcript of printed portions of the record and proceedings had in said Court, in the case entitled

In the Matter of ELECTRIC POWER & LIGHT CORPORATION, ELECTRIC BOND & SHARE COMPANY, as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of May in the year of our Lord one thousand nine hundred and fifty-four, and of the Independence of the said United States the one hundred and seventy-eighth.

[SEAL.]

(S.) A. DANIEL FUSARO,  
*Clerk.*

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. —

SECURITIES AND EXCHANGE COMMISSION, Petitioner

v.

DREXEL &amp; Co.

## STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the respective parties to the above-entitled case that:

For the purpose of the petition for a writ of certiorari the printed record shall consist of the following:

1. Joint appendix to briefs for appellant Drexel & Co. and appellants Christian A. Johnson and Cameron Beiwend individually and as a committee of common stockholders of Electric Power & Light Corporation.

2. The proceedings had before the United States Court of Appeals for the Second Circuit.

3. Clerk's certificate.

4. This stipulation.

IT IS FURTHER STIPULATED AND AGREED that petitioner will cause the Clerk of the United States Court of Appeals for the Second Circuit to certify and file with the Clerk of the Supreme Court of the United States the original record; and that, in the event the petition for writ of certiorari is granted, the printed record shall consist of the proceedings in the court below and such additional portions of the original record as the parties may designate.

IT IS FURTHER STIPULATED AND AGREED that any of the parties may refer in their briefs and argument to the record filed in the Supreme Court of the United States, including any part thereof which has not been printed.

SIMON E. SOBELLOFF,  
*Solicitor General,*  
*Counsel for Petitioner.*  
 JOHN MULFORD,  
*Counsel for Respondent.*

May 20, 1954.

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SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. —

SECURITIES AND EXCHANGE COMMISSION, Petitioner

v.

DREXEL & Co.

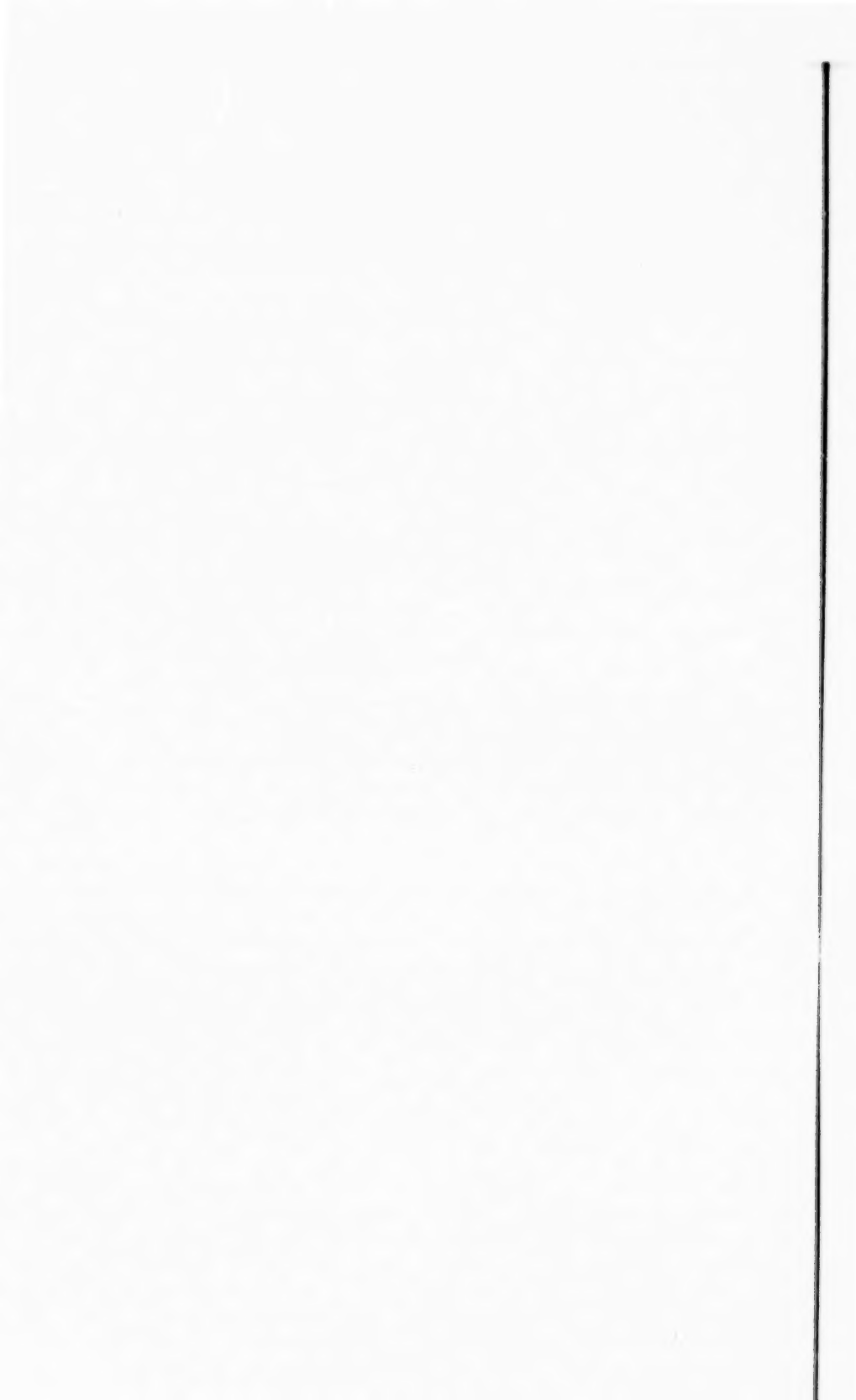
ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby extended to and including June 21st, 1954.

(S.) STANLEY REED,  
*Associate Justice of the Supreme Court*  
*of the United States*

Dated this 21st day of May, 1954.



*Plan for compliance by Electric Power & Light Corporation*

WITH SECTION 11 OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 SUBMITTED BY ELECTRIC BOND AND SHARE COMPANY

Electric Bond and Share Company (herein called "Bond and Share") submits this Plan with respect to its subsidiary Electric Power & Light Corporation (herein called "Electric") under Section 11 (c) of the Public Utility Holding Company Act of 1935 (herein called "the Act").

SUMMARY OF PLAN

The Plan is designed to accomplish full compliance by Electric with Section 11 of the Act.

The Plan proposes:

(1) The transfer to a company (for convenience herein called "Southern Electric System, Inc.") to be formed by Electric of all the securities now owned by Electric of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc. and Gentilly Development Company, Inc.

(2) The retirement of all of the outstanding preferred and second preferred stocks of Electric, including the rights to all accumulated and unpaid dividends thereon, in the following manner:

A. Electric shall offer, under the conditions hereinafter stated, to the holders of each class of its outstanding preferred and second preferred stocks, for each share held, shares of Common Stock of Southern Electric System, Inc., or, at the option of the holder thereof, shares of Common Stock of United Gas Corporation (herein called "United"), and

B. In the event that the offer referred to in "A" above has become effective and the holder of any such preferred stocks has not within the time provided accepted one of the proposals referred to in "A" above, Electric shall pay to each such holder cash in an amount equal to the liquidating claim of each share of preferred stock held, except in the case of holders of Second Preferred Stock, Series A (\$7) (sometimes herein called "Second Preferred Stock"), who shall be limited to a cash payment of \$175 for each share of such stock held.

(3) The offer to the common stockholders of Electric of rights to purchase shares of Common Stock of United and/or Southern Electric System, Inc. The purpose of this offer is to provide cash for the steps herein proposed.

(4) The settlement and discharge of the various claims and counterclaims among Bond and Share and its wholly owned sub-



sidiary, Ebasco Services Incorporated, and former wholly owned subsidiary, Phoenix Engineering Corporation, and Electric and its present and certain past subsidiaries and their respective security holders as such.

(5) The liquidation and dissolution of Electric, and the distribution of its remaining assets among its common stockholders and option warrant holders as their respective interests may require.

#### IV. Compromise, Settlement and Discharge of Various Claims Involving Electric, Its Present and Certain Past Subsidiaries and Their Respective Security Holders and Bond and Share and Its Wholly Owned Subsidiary, Ebasco Services Incorporated, and Former Wholly Owned Subsidiary, Phoenix Engineering Corporation

In proceedings heretofore initiated by the Commission under Sections 11 (a) (1) and 11 (b) (2) of the Act against Bond and Share and against Electric issues were raised and investigated by the Staff of the Commission, including the following: the validity in whole or in part of payments to Bond and Share and its wholly owned and former wholly owned subsidiary companies under service, engineering and construction contracts; alleged acts of mismanagement by Bond and Share and such subsidiaries in the position of control over, and relationship with, Electric and its subsidiaries; and questions of whether Bond and Share in its position of control violated its fiduciary duties in such position.

In addition to the proceedings before the Commission, several actions were commenced in the New York and Federal Courts by stockholders of Electric against Bond and Share and others, raising some of the same issues which were investigated by the Staff of the Commission in the Section 11 (b) (1) and Section 11 (b) (2) proceedings, as well as other issues.

In the light of the provisions of the Act, the pending proceedings before the Commission and the issues raised therein and in the complaints in all the stockholders' actions referred to above, this Plan proposes, in compliance with the Act and the orders and notices of the Commission, a complete compromise, settlement and discharge of any and all claims of Electric and its subsidiaries (and former subsidiaries named as parties in the foregoing proceedings) and their various security holders as such against Bond and Share and its wholly owned and former wholly owned subsidiaries, which claims include, but are not limited to, those in

any way relating to, arising out of, or involving service, engineering or construction fees or charges to the date of the final order of the Court approving this Plan, including also in such claims, without limitation thereto, those referred to herein which afford the alleged basis for causes of action in one or more of the stockholders' actions referred to above or which are involved in the proceedings instituted by and pending before the Commission. The approval of this Plan by the Commission and the Court and consummation thereof (in so far as the settlement of claims is concerned) shall have the effect of complete discharge of each and all such claims (to the extent that such claims have not theretofore been effectively discharged) against Bond and Share and its wholly owned and former wholly owned subsidiaries by and on behalf of Electric and its subsidiaries (and former subsidiaries named as parties in the stockholders' actions) and by and on behalf of their various security holders as such.

The full settlement and complete discharge of all the above-mentioned claims will be accomplished in a manner to be provided for by amendment to this Plan.

The offer of compromise and settlement proposed herein shall not be taken or construed as an admission by Bond and Share that any of the claims, charges or allegations made, either in proceedings before the Commission or in any of the stockholders' actions, are true, or that there is any infirmity in, or defense against the full enforcement by Bond and Share of, its rights and interests. The offer of compromise and settlement and any statement herein shall be without prejudice and shall not be used in evidence against Bond and Share, its wholly owned and former wholly owned subsidiaries or the officers or directors of Bond and Share or its said subsidiaries, in the event that for any reason this Plan shall fail of accomplishment.

#### AMENDMENTS OF PLAN

Until approved by the Commission, the Plan may be withdrawn, modified or amended in any respect or particular by Bond and Share. After being approved by the Commission and before being approved by the Court, the Plan may be withdrawn, modified or amended in any respect or particular by Bond and Share with the approval of the Commission. After being approved by the Court but before the Plan has been consummated, the Plan may be withdrawn, modified or amended in any respect or particular by Bond and Share with the approval of both the Commission and

the Court. No amendment to the Plan shall be effective without the consent and agreement of Bond and Share.

The manner and method of carrying out the Plan, including the steps to be taken and the order in which they are to be taken, are not exclusive. After ten days' notice thereof to the Commission given by Bond and Share, such steps may be altered and the order in which they are to be carried out may be changed, certain steps may be abandoned, or new and additional steps may be added and no such alteration, change, abandonment or addition shall be considered an amendment to the Plan if thereafter the carrying out of the Plan will result in the consummation of the substance of the transactions contemplated by the Plan in its present form. No such alteration, change, abandonment or addition shall, however, be made until approved by the Commission, if the Commission, within ten days after the mailing to it by Bond and Share of the foregoing notice, shall have notified Bond and Share that the Commission deems that such proposed alteration, change, abandonment or addition may constitute a material alteration of the Plan.

*Plan for compliance by Electric Power & Light Corporation*

WITH SECTION 11 OF THE PUBLIC UTILITY HOLDING COMPANY  
ACT OF 1935

This Plan is proposed as a compromise plan by Electric Power & Light Corporation (herein called "Electric") and its parent company, Electric Bond and Share Company (herein called "Bond and Share"), which holds securities representing 46.8% of the total outstanding voting power of Electric. Electric has heretofore filed with the Securities and Exchange Commission (herein called the "Commission") a certain plan entitled "Plan for Voluntary Exchange of Preferred Stock of Electric Power & Light Corporation for Common Stock of United Gas Corporation" as amended May 2, 1946. Thereafter, Bond and Share filed with the Commission a plan entitled "Plan for Compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act of 1935 Submitted by Electric Bond and Share Company" dated May 9, 1946. The latter plan, more comprehensive in scope, included the same subject matter as that covered in the plan filed by Electric. The two plans disclosed differences of opinion with respect to such subject matter. Conferences were thereafter held between the managements of Electric and

of Bond and Share and with the staff of the Commission. This Plan represents a compromise to which the managements of Electric and of Bond and Share have agreed in the light of those conferences.

#### SUMMARY OF PLAN

The Plan proposes:

(1) The transfer to a company to be formed by Electric (herein called for convenience the "New Company") of all the securities now owned by Electric of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service Inc.

(2) The retirement of all the outstanding Preferred Stock and Second Preferred Stock of Electric, including the rights to all accumulated and unpaid dividends thereon, in the following manner:

(i) Electric will offer, under the conditions hereinafter stated, to the holders of its outstanding Preferred Stock and Second Preferred Stock, for each share held and in retirement thereof, shares of Common Stock of the New Company or, at the option of the holder thereof, shares of Common Stock of United Gas Corporation (herein called "United"), such offer to become effective upon the deposit of 60% or more of the aggregate number of outstanding shares of the \$7 Preferred Stock, \$6 Preferred Stock and Second Preferred Stock of Electric, or otherwise as hereinafter provided in Part II, A, of this Plan.

(ii) In the event that the offer referred to above in clause (i) shall have become effective, all shares of \$7 Preferred Stock, \$6 Preferred Stock and Second Preferred Stock not exchanged thereunder within the time limits prescribed by said offer as hereinafter provided, shall be retired by Electric by paying to the holders of shares of such classes of stock the respective amounts in cash shown in Part II, B, of this Plan.

(3) The offer to the common stockholders of Electric of rights to purchase shares of Common Stock of United or of the New Company or of both. The purpose of this offer is to provide cash for the steps herein proposed.

(4) The settlement and discharge of the various claims and counterclaims between Bond and Share, its wholly owned subsidiaries, Ebasco Services Incorporated and Phoenix Engineering Corporation, and the security holders of Bond and Share, on the one hand, and Electric and its present and certain past subsidiaries and their respective security holders, on the other hand.

(5) The liquidation and dissolution of Electric, and the distribution of its remaining assets among its common stockholders and option warrant holders as their respective interests may require.

**IV. Compromise, Settlement and Discharge of Various Claims Involving Electric, Its Present and Certain Past Subsidiaries and Their Respective Security Holders and Bond and Share and Its Wholly Owned Subsidiaries, Ebasco Services Incorporated and Phoenix Engineering Corporation, and the Security Holders of Bond and Share**

In proceedings heretofore initiated by the Commission under Section 11 (b) (2) of the Act (SEC File No. 59-12) against Bond and Share, Electric and others, issues were raised and investigated by the staff of the Commission with respect to the corporate relationships between Bond and Share and its wholly owned subsidiaries and Electric and its present and certain former subsidiaries, including the following: the validity in whole or in part of payments to Bond and Share and its wholly owned subsidiary companies, under service, engineering and construction contracts with Electric and its subsidiaries and certain former subsidiaries; alleged acts of mismanagement by Bond and Share and such wholly owned subsidiaries in the position of control over, and relationship with, Electric and its subsidiaries; questions of financial transactions; and questions of whether Bond and Share in its position of control in the capacity of promoter or otherwise violated its fiduciary duties to Electric and its subsidiaries and certain former subsidiaries and their respective security holders as such.

In addition to the proceedings before the Commission, several actions were commenced on the dates hereinafter set forth in the New York and Federal courts by stockholders of Electric against Bond and Share and others, raising some of the same issues which were investigated by the staff of the Commission in the Section 11 (b) (2) proceedings, as well as other issues, including alleged acts of mismanagement and breaches of fiduciary duty on the part of Bond and Share to Electric and its subsidiaries by virtue of Bond and Share's position of domination and control, and the position of the investment of Bond and Share in Electric. The respondents in the proceedings initiated by the Commission in-

cluded all the corporate defendants in the State and Federal court actions listed below:

Title of action	Court	Date commenced against Bond and Share
A. Shell Lezberg, Plaintiff, v. C. E. Groesbeck, et al., Defendants.	District Court of the United States, Southern District of New York.	June 10, 1941.
Rebecca Y. Rosenblatt, Plaintiff, v. H. L. Dickerson, et al., Defendants.	District Court of the United States, Southern District of New York.	December 31, 1941.
Helen Katz, Plaintiff, v. Ernest Tracy, et al., Defendants.	Supreme Court of the State of New York, New York County.	January 7, 1942.
Jennie Britton, Plaintiff, v. Electric Bond and Share Company, et al., Defendants.	Supreme Court of the State of New York, Kings County.	April 12, 1945.
Selma Goodman, Plaintiff, v. H. F. Sanders, et al., Defendants.	District Court of the United States, Southern District of New York.	May 16, 1945.
John E. Carr, Plaintiff, v. Electric Power and Light Company, et al., Defendants.	District Court of the United States, Southern District of New York.	May 23, 1945.
John E. Carr, Plaintiff, v. Electric Power and Light Company, et al., Defendants.	Supreme Court of the State of New York, New York County.	January 10, 1946.*

\*Date commenced against Ebasco Services Incorporated.

In the plan of reorganization of Utah Power & Light Company, a former subsidiary of Electric, which was approved by the Commission on November 13, 1945 (Holding Company Act Release No. 6212) and by the United States District Court for the District of Utah on January 14, 1946, and which has been consummated, Utah Power & Light Company assigned to Electric any and all claims which Utah Power & Light Company or its subsidiaries may have had against Bond and Share and its wholly owned subsidiaries.

Copies of the complaints in all the actions described above have been filed with the Commission. Reference is made to such complaints and to the record in the proceedings above referred to instituted by the Commission. Such complaints and the record in such proceedings are hereby incorporated by reference.

In the light of the provisions of the Act and of the various charges and claims made, and of the record in the proceedings before the Commission above referred to and the complaints in the stockholders' actions described above, the managements of Electric and of Bond and Share have agreed upon the compromise embodied in this Plan as a means of effectuating a settlement and complete discharge of all claims of either of the parties hereto, their subsidiaries and certain former subsidiaries and their respective various security holders as such, against the other party hereto in any way related to, arising out of or involving the conduct or management of Electric or its subsidiaries, or its



or their predecessors, to the date of entry of the Court enforcement order under Section 11 (e) of the Act with respect to this Plan, including, but without being limited to, the claims specifically mentioned or referred to above which are involved in the proceedings before the Commission hereinabove mentioned or which form the alleged bases for causes of action in one or more of the stockholders' derivative actions enumerated above. The approval of the Plan by the Commission, its confirmation by the Court and its consummation by the parties shall have the effect of complete compromise, settlement and discharge of each and all of such claims. In consideration of the various steps to be taken in carrying out and consummating the Plan, the parties hereto have entered into the Plan and have mutually bound themselves thereby on the terms and conditions herein set forth for the purpose of bringing about such compromise, settlement and discharge.

The compromise hereby agreed upon shall be effected by the payment in cash to Electric by Bond and Share of the sum of \$2,200,000, and such cash, together with the other acts, steps, and proceedings to be taken by Bond and Share under this Plan, shall be accepted by Electric in full settlement and complete discharge of any and all claims of Electric and its present and former subsidiaries and their respective security holders as such against Bond and Share and its wholly owned subsidiaries and its security holders.

In connection with the effectuation of this compromise and settlement, the following present and former subsidiaries of Electric will be parties to the proceedings before the Commission and before the United States District Court with respect to this Plan: Arkansas Power & Light Company, Dallas Power & Light Company (former subsidiary), Idaho Power Company (former subsidiary), Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service Inc. In the event that any such subsidiary shall establish, in said proceedings before the Commission or the Court, its right to any portion of the \$2,200,000 to be paid by Bond and Share to Electric hereunder, Electric will pay to such subsidiary the portion thereof without interest to which it shall so establish its right.

It is the purpose and intent of this Plan and the compromise and settlement herein involved, that upon the consummation thereof all claims of any of the parties hereto or their subsidiaries, including former subsidiaries or their respective various security holders as such, against any of the parties hereto in any way related to, arising out of or involving the organization, conduct or management of Electric or its subsidiaries, or its or their predecessors, whether herein enumerated or not, shall be completely compromised, settled and discharged.

The Commission is hereby petitioned, if it approves the Plan and the compromise embodied herein, to approve the payment of an aggregate of \$175,000 out of said \$2,200,000 to be paid hereunder by Bond and Share to Electric as above provided to the plaintiffs, their attorneys, their accountants and any other persons employed or retained by said plaintiffs in the stockholders' actions referred to above in full settlement and satisfaction of all amounts which said plaintiffs, their attorneys, their accountants and such other persons are or may be entitled to receive by way of reimbursement of disbursements or as allowances for legal or professional services or otherwise.

The offer of compromise and settlement proposed herein shall not be taken or construed as an admission by Bond and Share that any of the claims, charges or allegations made, either in proceedings before the Commission or in any of the stockholders' actions, are true, or that there is any infirmity in, or defense against the full enforcement by Bond and Share of, its rights and interests. The offer of compromise and settlement and any statement herein shall be without prejudice and shall not be used in evidence against either party hereto or its subsidiaries or the officers or directors of either party or its subsidiaries, in the event that for any reason this Plan shall fail of accomplishment.

#### AMENDMENTS OF PLAN

Until approved by the Commission, the Plan may be withdrawn or may be modified or amended in any respect or particular by agreement between Electric and Bond and Share. After being approved by the Commission and before being approved by the Court, the Plan may be withdrawn or may be modified or amended in any respect or particular by agreement between Electric and Bond and Share with the approval of the Commission. After being approved by the Court and before the Plan has been consummated, the Plan may be withdrawn or may be modified or amended in any respect or particular by agreement between Electric and Bond and Share with the approval of both the Commission and the Court. No amendment of the Plan shall be effective without the consent and agreement of Electric and Bond and Share.

The manner and method of carrying out the Plan, including the steps to be taken and the order in which they are to be taken, are not exclusive. After ten days' notice thereof to the Commission given by Electric and Bond and Share, such steps may be altered and the order in which they are to be carried out may be changed, certain steps may be abandoned, or new and additional steps may be added, and no such alteration, change, abandonment

or addition shall be considered an amendment of the Plan if there-  
after the carrying out of the Plan will result in the consummation  
of the substance of the transactions contemplated by the Plan in  
its present form. No such alteration, change, abandonment or  
addition will, however, be made until approved by the Commission,  
if the Commission, within ten days after the mailing to it by  
Electric and Bond and Share of the foregoing notice, shall have  
notified Electric and Bond and Share that the Commission deems  
that such proposed alteration, change, abandonment or addition  
may constitute a material alteration of the Plan.

**APPLICATION OF ELECTRIC BOND AND SHARE  
COMPANY on Form U-1**

**File Number 70-1806**

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D. C.**

**Reid & Priest Company**

**File Number**

**FORM U-1**

For use by a Registered Holding Company or Subsidiary Com-  
pany filing an application or declaration that includes an issue  
or sale of securities, acquisition or sale of assets, change of  
rights, guaranty or assumption of liability, or a transaction sub-  
ject to rules under Sections 12 (b) or 12 (c) of the Public  
Utility Holding Company Act of 1935.

**SECTION I**

**(Applicable in all cases)**

1. Exact name of the Company filing this form. ("Company" as  
used in this form includes "companies" where more than one  
company is filing an application or declaration.)

Electric Bond and Share Company (hereinafter sometimes re-  
ferred to as "Bond and Share").

2. Address of principal executive office of the Company.

Electric Bond and Share Company, Two Rector Street, New  
York 6, New York.

3. Name of Holding Company System.

Electric Bond and Share Company Holding Company System.

4. Name and address of person authorized to receive notices and communications from the Securities and Exchange Commission.

H. H. Dinkins, Jr., Secretary, Electric Bond and Share Company, Two Rector Street, New York 6, New York.

The Commission is respectfully requested to mail copies of all notices and communications to: H. H. Dinkins, Jr., Secretary, Electric Bond and Share Company, Two Rector Street, New York 6, New York. James L. Boone, Reid & Priest, Two Rector Street, New York 6, New York.

5. Date when Commission action is requested, and if this involves acceleration, full explanation of the reasons therefor.

The Applicant requests that the Commission's order in this matter be entered at or about the time the Commission enters its order or orders in connection with the "Plan for Compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act of 1935." Much information with respect to the Applicant is already on file with the Commission. Such record has been made "In the Matter of Electric Bond and Share Company, et al.," File No. 59-12 and in other proceedings before the Commission.

6. Clear and precise statement of the proposed transaction. The answer to this item should describe each aspect of the entire transaction. If the proposed transaction is part of a general program describe such program and the relation to it of the proposed transaction.

Bond and Share and Electric Power & Light Corporation (Electric) are registered holding companies under the Public Utility Holding Company Act of 1935 (Act).

On May 7, 1940, the Securities and Exchange Commission (Commission) initiated a proceeding against Bond and Share and certain of its subsidiaries including Electric, under Section 11 (b) (2) of the Act for the purpose, among others, of determining whether it is necessary, in order to comply with the requirements of said Section to discontinue the existence of, or modify the corporate structure or redistribute the voting power among security holders of Bond and Share or any of the respondents in said proceeding.

By an order dated August 22, 1942 this Commission decided, among other things, that pursuant to Section 11 (b) (2) of the Act the existence of Electric be terminated and Electric be dissolved. This order was confirmed by the United States Circuit Court of Appeals for the First Circuit on May 28, 1945 (141 F.

(2d) 606), and on review of the affirmance of said order was further confirmed by the Supreme Court of the United States (329 U. S. 90, 91 L. Ed. 89, 67 S. Ct. 133).

On the 25th day of July 1945, Bond and Share filed its Plans entitled "Plans of Electric Bond and Share Company under Section 11 (c) of the Public Utility Holding Company Act of 1935."

On the 25th day of March 1948, Electric filed with the Commission (File No. 54-139) (File No. 59-12) its Plan entitled "Plan for Compliance by Electric Power & Light Corporation with Section 11 of the Public Utility Holding Company Act of 1935," (hereinafter sometimes referred to as "Electric Plan").

Bond and Share owns 46.8% of the total outstanding voting power of Electric and the securities of Electric which it holds at this date are as follows:

<i>Class of stock</i>	<i>Shares</i>
\$7 preferred.....	485
Second preferred.....	13,905
Common stock.....	1,976,638

In addition to such stock Bond and Share owns option warrants for the purchase of 393,408 shares of Common Stock of Electric.

If the Electric Plan is consummated Bond and Share will receive from Electric securities in the New Company which Electric proposes to organize and securities in United Gas Corporation of the class in approximately the following amounts:

	<i>Share of common stock</i>	<i>Percent of total</i>
New company*.....	478,000	10.9
United Gas Corporation**.....	2,871,000	26.9

\*Based on 4,400,000 shares of Common Stock of New Company.

\*\*Based on 10,653,302 shares of Common Stock of United.

in return for which Bond and Share shall surrender the securities in Electric which Bond and Share now owns.

The exact amount of securities and assets which Bond and Share will receive pursuant to the Electric Plan is dependent on the assets of Electric available for distribution to the holders of Common Stock of United received by it under the Electric Plan in liquidation and dissolution of Electric.

Bond and Share proposes that it will sell, distribute or otherwise dispose of, in such manner as the Commission may permit, all of the Common Stock of the New Company and all of the Common Stock of United received by it under the Electric Plan not later than one year (unless such period is extended by the Commission) after the receipt of same by Bond and Share; provided, however, that Bond and Share may, not later than sixty days after entry of an order of the Commission approving the

Electric Plan, institute appropriate proceedings before the Commission for relief from its commitment to dispose of such Common Stock of United and for determination of its right under the Act to hold such Common Stock of United. If Bond and Share shall so institute such proceedings, it will diligently prosecute same to final conclusion before the Commission (and before the Courts if review is sought) and promptly take such steps, if any, as may be required to comply with the final decision.

All the securities to be received by Bond and Share under the Electric Plan will be received and held by it subject to the full jurisdiction of the Commission with respect to same.

Bond and Share requests the approval of this Commission to any and all of the transactions proposed by and pursuant to the Electric Plan as the same may relate to Bond and Share with particular reference to (but not excluding any other transaction as may in said Electric Plan relate to Bond and Share), (a) the acquisition by and transfer to Bond and Share of the securities of the New Company and of United Gas Corporation and of any other security or assets and, in turn, the surrender to Electric by Bond and Share of the securities of Electric now owned by Bond and Share, and (b) the approval of the compromise, settlement and discharge of claims and counterclaims as set forth and described in Step 2 or Part 2 of the Electric Plan concerning which and for the purpose of effectuating and consummating the same, Bond and Share agrees to such compromise, settlement and discharge in consideration for which Bond and Share agrees to pay Electric \$2,200,000. In making such agreement it is to be understood that the offer of compromise and settlement proposed in the Electric Plan and the acceptance thereof by Bond and Share shall not be taken or construed as an admission by Bond and Share that any of the claims, charges or allegations made, either in proceedings before the Commission or in any pending stockholders' actions, are true, or that there is any infirmity in, or defense against the full enforcement by Bond and Share of, its rights and interests. The offer of compromise, settlement and discharge and any statement concerning the same, shall be without prejudice and such compromise, settlement and discharge shall not be used in evidence against any party or its or their subsidiaries or its or their officers or directors in the event that for any reason the Electric Plan shall fail of accomplishment.

Bond and Share requests that the order of the Commission in approving the transactions contemplated by and pursuant to the Electric Plan as the same may relate to Bond and Share shall recite that the relevant transactions of such Plan as to Bond and Share are necessary or appropriate to the integration or simplification of the holding company system of Bond and Share and



necessary or appropriate to effectuate the provisions of subsection (b) of Section 11 of the Act in accordance with the meaning and requirement of the Internal Revenue Code, as amended, including Section 1808 (f) and Supplement R thereof.

**7. Reasons why it is desired to consummate transaction.**

It is desirable that the proposed transactions be consummated as further steps designed to effect compliance by Bond and Share and Electric with the provisions of Section 11 (b) of the Act. Consummation of the Electric Plan will, among other things, result in the elimination of Electric from the holding company system of Bond and Share.

**8. Sections of the Act and rules thereunder which the Company considers applicable to the transaction and if any section or rule would be applicable were it not for a specific exemption by rule or order, state the basis for claiming such exemption.**

Bond and Share believes as to it that Sections 9 (a), 10, 11, 12 (c) and 12 (f) of the Act and Rule U-43 of the Commission are applicable to the transactions of the Electric Plan as the same pertain to Bond and Share. Such sections are applicable because the Electric Plan proposes the acquisition by and transfer to Bond and Share of securities and assets of Electric and, in turn, the surrender by Bond and Share to Electric of securities of Electric now owned by Bond and Share both of which are holding companies as defined under the Act.

If sections of the Act or rules other than those above mentioned, apply to such transaction, Bond and Share suggests that this Application be considered as governing such transactions under such sections and rules as are applicable thereto.

**9. States reasons why Company believes that there will be compliance with each of such applicable sections of the Act and rules thereunder.**

Applicant believes that the transactions will be in compliance with each of the sections of the Act and rules referred to in the answer to Item 8 of this section for the following reasons:

(a) The proposed transactions will not be carried out except pursuant to approval thereof by the Commission;

(b) The proposed transactions are steps in compliance by Bond and Share and Electric with Section 11 of the Act and orders of this Commission herein referred to;

(c) The proposed transactions will not tend toward interlocking relations or the concentration of control of public utility companies of a kind or to an extent detrimental to the public interests or the interests of investors or consumers;

(d) Bond and Share does not yet know what fees, commissions or other remunerations are to be paid in connection with the transactions proposed, but any such fees, commissions or other remunerations will be reasonable;

(e) The proposed transactions will not unduly complicate the capital structure of the holding company system of Bond and Share and will not be detrimental to the public interest or to the interests of investors or consumers or the proper functioning of such holding company system;

(f) The proposed transactions are not unlawful under the provisions of Section 8 or Section 10 (f) of the Act and are not detrimental to the carrying out of the provisions of Section 11 of the Act;

(g) The carrying out of the proposed transactions as a whole are in the public interest and that of investors and consumers and in all respects comply with the Act; and

(h) The proposed transactions will not result in an unfair or inequitable distribution of voting power among holders of the securities of Bond and Share and Electric.

#### 10. Statement pursuant to Rule III (e) of the Commission's Rules of Practice.

(1) Specifying the procedures considered necessary or appropriate in respect of the application or declaration with particular reference to (a) whether there should be a recommended decision by hearing officer, (b) whether there should be a recommended decision by any other responsible officer of the Commission, (c) whether the staff of the Public Utilities Division may assist in the preparation of the Commission's decision, and (d) whether there should be a 30-day waiting period between the issuance of the Commission's order and the date it is to become effective; or

(2) Except when it is desired that the application or declaration be granted or permitted to become effective pursuant to Rule U-23 without a hearing being held, indicating that such specification will be made in the course of the hearing with respect to the application or declaration.

[To be answered by Amendment]

## SECTION II

(Applicable in all cases except where the Company has filed a Registration Statement under the Securities Act of 1933)

Items 2, 4, 7, 8, 10 (a), (b), (c), (e), (f), (h), (i), 12, 13 and 14 are inapplicable

1. State or States or other sovereign power under which the Company is organized and form of organization (corporation, trust, et cetera), and the date of its organization.

Bond and Share is a corporation. It came into existence under the laws of the State of New York on March 13, 1929.

3. List of State commissions having jurisdiction to regulate public utility companies which have jurisdiction over the proposed transaction. If any other Federal commission has jurisdiction over the proposed transaction, name such commission.

None.

5. Describe the consideration for the transaction and indicate separately (where necessary use additional tabulations).

See Electric Plan.

6. State as to item 5.

See Electric Plan.

9. Summarize conclusions reached in Exhibit C as to whether or not all requisite action has been taken by stockholders, directors and other similar bodies that is necessary to make valid the proposed transaction and specify any steps which have not yet been taken and state when the required action will be taken.

All requisite action for the filing hereof has been taken or will be taken by the Board of Directors of Bond and Share. Further action as is required to make valid the proposed transactions will be taken at the proper time or times.

10. Include information as to the following:

(d) Summarize the terms of any existing agreements made by the Company or other companies in the same holding company system with respect to present or future distribution of securities.

None.

(g) State any other facts which might be taken to indicate that there is liable to be or to have been an absence of arm's length bargaining in the transaction together with any desired explanation of such facts.

Electric is a part of the Bond and Share Holding Company System.

111. State name of each person who is, or has been during the current calendar year, an officer or director of the Company, each of its subsidiaries and each company of which it is a subsidiary and state the financial connection, if any, of each such person. (Where circumstances warrant, it will be sufficient to state that there has been no change since such information was previously filed with the Commission, and specifically to refer to the prior filing.)

As of the date hereof there has been no change with respect to Bond and Share in the information previously filed with the Commission in Bond and Share's Annual Supplement to Registration Statement on Form U5S for the year 1947 (File No. 30-139). (To be completed by amendment, if necessary.)

### SECTION III

If the Proposed Transaction Involves an Issue, or a Sale by the Issuer, of a Security, Submit for Each Class of Security to be Issued or Sold the Following Information:

See Electric Plan.

### SECTION IV

If the Proposed Transaction Involves a Sale of Utility Securities or Utility Assets or Involves any Acquisition (Other Than of Securities Issued by the Acquirer) Submit the Following Information:

See Electric Plan.

### SECTION V

In the Case of Any Other Transaction Including an Alteration of the Priorities, Preferences, Voting Power, or Other Rights of the Holders of an Outstanding Security of the Company; or a Guaranty of, or Assumption of Liability on, a Security of Another Company; or an Acquisition, Redemption or Retirement of Outstanding Securities of the Company; or a Declaration of a Dividend; or Any Other Transaction Subject to Rules Under Sections 12 (b) or 12 (c) of the Act, Submit the Following Information:

See Electric Plan.

## SECTION VI

(Applicable in all Cases)

1. Give a concise statement of all the applicable provisions of the articles of incorporation, bylaws or similar documents relating to the right of the person signing and filing this statement to take such action on behalf of the Company, together with a statement that all such requirements have been complied with and that the person signing and filing the same is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors or other bodies, such resolutions shall be attached as an exhibit to, or the pertinent provisions thereof shall be quoted in, the statement.

There are no applicable provisions of the charter bylaws or other similar documents of the Applicant, relating to the right of the persons signing and filing this Application to take such action on behalf of the Applicant. Such authorization is dependent upon resolutions of the Board of Directors of said Applicant.

2. (a) The Applicant hereby requests that the original, a duplicate original, or a photo copy of this Application and any and all amendments thereto, whether executed hereafter or concurrently herewith, be offered in evidence on behalf of the Applicant and be received in evidence as an exhibit of the Applicant in any proceeding before the Securities and Exchange Commission, or any officer thereof or any Trial Examiner designated thereby, and that the verification of such Application and any amendment thereto be considered as if the person signing such verification had personally appeared and testified orally under oath, duly administered, in any such proceeding to the statements contained in such verification. (b) The Applicant hereby agrees that whenever any document constituting part of the official files of the Commission is offered or received in evidence, it is offered or received subject to the reservation that if at any future time a transcript of the record is called for, either in connection with a petition for review or otherwise, copies may be furnished in lieu of the original.

This Statement comprises:

- (a) Pages numbered 1 to 13 consecutively.

This statement has been prepared in accordance with the instructions for use of Form U-1.

Pursuant to the requirements of the Public Utility Holding Company Act of 1935, the Applicant has caused this instrument to be duly executed on its behalf by its duly authorized officers on this 31st day of March 1948.

[SEAL]

ELECTRIC BOND AND SHARE COMPANY,

By (S) CURTIS E. CALDER,

*Chairman of the Board of Directors.*

(S) GEORGE G. WALKER,

*President.*

Attest:

(S) H. H. DINKINS, Jr.

STATE OF NEW YORK,

*County of New York, ss:*

The undersigned being duly sworn deposes and says that they have duly executed the attached instrument for and on behalf of Electric Bond and Share Company named therein, and that they are Chairman of the Board of Directors and the President, respectively, of such Company. Deponents further say that they are familiar with such instrument and the transactions referred to therein, and that to the best of their knowledge, information and belief the statements made in such instrument are true. Deponents further say that all action by stockholders, directors, and other bodies necessary to authorize deponents to execute and file such instrument has been taken.

(S) CURTIS E. CALDER,

*Chairman of the Board of Directors.*

(S) GEORGE G. WALKER,

*President.*

Subscribed and sworn to before me at New York, New York, this 31st day of March 1948.

[SEAL]

(S) Alice M. Powell,

Alice M. POWELL,

*Notary Public in the State of New York.*

Residing in Queens County. Queens Co. Clk.'s No. 1190, Reg. No. 209-P-9. Certificates filed in N. Y. Co. Clk.'s No. 51, Reg. No. 105-P-9. Certificate filed in Westchester Co. Commission expires March 30, 1949.





## Supreme Court of the United States

No. 153, October Term, 1954

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

*v.*

DREXEL AND COMPANY

*Order allowing certiorari*

Filed October 14, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LIBRARY  
SUPREME COURT, U.S.

No. 153

Office - Supreme Court, U. S.

FILED

JUN 21 1954

HOWARD B. WILLEY, Clerk

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**In the Supreme Court of the United States**

OCTOBER TERM, 1954

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SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

DREXEL & COMPANY

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PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
SECOND CIRCUIT

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# In the Supreme Court of the United States

OCTOBER TERM, 1954

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No. 153

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

DREXEL & COMPANY

---

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
SECOND CIRCUIT \_\_\_\_\_

The Solicitor General, on behalf of the Securities and Exchange Commission, prays that a writ of certiorari be issued to review a judgment of the United States Court of Appeals for the Second Circuit entered on February 25, 1954.

## OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 288-289) was entered on December 23, 1952, and has not been reported. The opinion of the Court of Appeals (R. 305-312) is reported in 210 F. 2d 585.

## JURISDICTION

The judgment of the Court of Appeals with respect to which the writ of certiorari is sought was entered on February 25, 1954 (R. 313). The time for filing a petition was on May 21, 1954, extended to June 21, 1954, by order of Mr. Justice Reed.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254. See also Section 25 of the Public Utility Holding Company Act of 1935, 49 Stat. 803, 835, 15 U.S.C. 79a *et seq.*

#### QUESTION PRESENTED

Whether, under the Public Utility Holding Company Act of 1935, the Securities and Exchange Commission's jurisdiction over fees payable by registered holding companies covers a fee claimed for services to a registered holding company to protect its interests in the reorganization of its subsidiary, when the fee is payable by the parent and not out of the assets of the subsidiary in reorganization.

#### STATUTE INVOLVED

The pertinent provisions of the Public Utility Holding Company Act of 1935 (49 Stat. 803, 15 U.S.C. 79a *et seq.*) are set forth in the Appendix, *infra*, pp. 25-30.

#### STATEMENT

This case presents the question whether the Securities and Exchange Commission has statutory jurisdiction pursuant to the Public Utility Holding Company Act of 1935 to pass upon a fee payable by Electric Bond and Share Company ("Bond and Share"), a registered holding company, for services rendered in consolidated proceedings dealing with the reorganization of a subsidiary, Electric Power & Light Corporation ("Electric"), and related transactions by Bond and Share.

By order dated August 22, 1942, entered pursu-

ant to Section 11(b) (2) of the Act, the Commission directed among other things that Electric be dissolved, and that Electric and Bond and Share submit to the Commission a plan or plans for the effectuation of the order. *Electric Bond and Share Company*, 11 S.E.C. 1146, Holding Company Act Release No. 3750. The order was affirmed on appeal. *American Power & Light Company v. Securities and Exchange Commission*, 141 F. 2d 606 (C.A. 1), affirmed, 329 U.S. 90.

During the years 1945-1948 Bond and Share and Electric submitted to the Commission, pursuant to Section 11(e) of the Act, plans for the dissolution of Electric. The plans provided for the exchange by Bond and Share and other stockholders of Electric of their shares of Electric stock for stock in United Gas Corporation and Middle South Utilities, Inc., and for the payment of cash by Bond and Share in settlement of claims of Electric and its subsidiaries. Extensive hearings were held. The plan ultimately consummated was filed by Electric in 1948 (R. 300, item 6).<sup>1</sup> On the same day, Bond and Share filed an application-declaration pursuant to Sections 9, 10, 11 and 12 of the Act (R. 300, item 8) requesting the necessary Commission approval of its "sale" of its holdings of Electric stock, its "acquisition" of shares of the

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<sup>1</sup> This reference is to a stipulation as to the contents of the record on appeal to the court of appeals. Not all of the stipulated record was printed there, nor is it all printed in the record before this Court. However, the entire record before the court of appeals has been transmitted to the Clerk of this Court and is, therefore, available for reference.

stocks of United and Middle South, and its payment of \$2,200,000 in settlement of intra-system claims.<sup>2</sup> These transactions, and Commission approval thereof, were necessary in order to permit consummation of the plan. The plan and Bond and Share's amended application-declaration were considered together by the Commission in consolidated proceedings, and were approved by order dated March 7, 1949 (R. 36-41), subject to a specific reservation of jurisdiction "to determine the reasonableness and appropriate allocation of all fees and expenses and other remuneration incurred or to be incurred in connection with the said Plan, as amended, and the transactions incident thereto," other than certain fees separately approved as part of the plan.

The plan was enforced by order of the United States District Court for the Southern District of New York (R. 301, Item 15), which was affirmed on appeal. *In re Electric Power & Light Corporation*, 176 F. 2d 687 (C.A. 2), stay denied, 337 U.S. 903.

Drexel & Co. ("Drexel") had been retained by Bond and Share in May, 1945, and advised Bond

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<sup>2</sup> Section 2(a)(22) of the Act defines "acquisition" to include "any purchase, acquisition by lease, exchange, merger, consolidation, or other acquisition." Section 2(a)(23) of the Act defines "sale" to include "any sale, disposition by lease, exchange or pledge, or other disposition." In *Electric Bond and Share Company*, Holding Company Act Release No. 11,004 (February 6, 1952), petition for review withdrawn, the Commission held that Sections 9(a) and 10 of the Act were applicable to Bond and Share's acquisition of securities in connection with the reorganization of Electric.



and Share with respect to the formulation of plans and the proceedings before the Commission. No fee had been agreed upon; both Drexel and Bond and Share understood that the amount to be paid would be "such amount as might be approved by the Commission" (R. 193).

Thereafter proceedings were had before the Commission pursuant to the reserved jurisdiction to pass upon fees and expenses. Bond and Share filed a "Petition \* \* \* for Approval of Payment of Fees and Expenses," requesting that the Commission approve aggregate payments of approximately \$265,000 (later increased to \$305,000), including \$100,000 to Drexel (R. 54-55),<sup>3</sup> and a petition for reimbursement by Electric (R. 119).

Drexel filed a "Petition \* \* \* for Approval of Fee for Services on Behalf of Electric Bond and Share Company," together with a supporting statement (R. 59-117). The petition was introduced by the statement:

Drexel & Co. has rendered to and on behalf of Electric Bond and Share Company services in connection with the reorganization of Electric Power & Light Corporation and transactions and matters incident to such reorganization.

It requested the Commission to permit Bond and Share to pay the \$100,000 claimed for such services. After due notice the Commission held hear-

<sup>3</sup> The Drexel item appears as a payment to Edward Hopkinson, Jr., the senior partner of the firm (R. 118).

ings on these and other applications for approval of fees and expenses. By Findings and Opinion and Order dated April 21, 1952, the Commission approved and directed payment of approximately \$590,000 of fees and expenses by Electric, and \$250,000 of fees and expenses by Bond and Share. The amount approved for payment to Drexel was \$50,000. Bond and Share's application for reimbursement from Electric was denied. (R. 212-270.)

On June 19, 1952, the Commission filed a Supplemental Application for approval of the payment, and of the denial of payment, of fees and expenses as determined by the Commission in the United States District Court for the Southern District of New York (R. 270-277), which had reserved appropriate jurisdiction in its order approving and enforcing the dissolution plan (R. 41-47).

Drexel, among others, filed objections to the Commission's Supplemental Application (R. 278-282). Bond and Share did not object in court to the Commission's denial of its claim for reimbursement from Electric.

After a hearing on the Supplemental Application and the objections thereto, the Court entered its opinion and order overruling the objections and approving the Commission's order (R. 288-292). Drexel and others appealed. The Court of Appeals reversed the order below as to the fee of Drexel "for lack of jurisdiction in the Commission," and otherwise affirmed it (R. 312).

The opinion below concedes that the Commission's power and duty to determine whether a Sec-

tion 11(e) plan is "fair and equitable to the persons affected" give the Commission jurisdiction to determine what allowances shall be made for fees and expenses (R. 307). It holds, however, that a fee payment by Bond and Share itself does not "affect" its stockholders in such a way as to be relevant in determining whether Electric's plan is fair and equitable (R. 308). The opinion below considers also the provisions of Section 11(f) of the Act, authorizing the Commission to pass upon fees payable "in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof". It suggests, however, that Section 11(f) is limited to proceedings where a receiver or trustee has been appointed, and holds that the fee to be paid by Bond and Share to Drexel is not a fee paid "in connection with" the proceeding for the reorganization of Electric within the meaning of the quoted phrase as used in Section 11(f) (R. 310).

The writ is sought for the purpose of securing review of that part of the decision below which denies the Commission's jurisdiction to pass upon the Drexel fee.

#### REASONS FOR GRANTING THE WRIT

This case presents an important question of Federal law which should be settled by this Court. Moreover, the decision below conflicts, at least in principle, with the decision of the Court of Appeals for the District of Columbia Circuit in *Halsted v.*

*Securities and Exchange Commission*, 182 F. 2d 660 (C.A. D.C.), certiorari denied, 340 U. S. 834. An interpretation of the Act contrary to the decision below has been consistently followed by the Commission throughout the history of the Act in some 30 or more cases; has been accepted by the holding companies involved (including Bond and Share); and, up to the present case, has been enforced by the courts without question. There are currently pending before the Commission at least four proceedings, involving fee applications of several millions of dollars, in which this issue is involved.

1. The decision below—based upon a strict and piecemeal interpretation of Section 11(e) and (f) of the Act, without regard to the statutory context from which the general standards of Section 11 “derive much meaningful content”, *American Power & Light Co. v. S.E.C.*, 329 U. S. 90, 104. Its rejection of the Commission’s Section 11(e) jurisdiction of the Drexel fee depends upon the concept that the fee is “but a business expense of Bond and Share,” described as “a solvent corporation whose business affairs are conducted by its own management”. (R. 308, 307). The court ignores the Commission’s regulatory authority applicable to Bond and Share as a registered holding company. The opinion does not even advert to the Commission’s jurisdiction pursuant to Sections 10 and 12 of the Act (Appendix, *infra*, pp. 26, 29-30) over fees payable by Bond and Share by reason of its own direct participation in the transactions incident to the reorganization, namely its acquisition of securities from Electric, its disposition of its holdings in

Electric, and its settlement of the intrasystem claims. Each of these transactions required Commission approval, and was the object of Bond and Share's application-declaration filed with the Commission; the proceeding with respect to that filing was consolidated with the Section 11(c) proceeding; and the Commission's approval of these transactions was conditioned upon subsequent approval of the fees involved. To the extent that the services of the respondent related to these transactions, Sections 10 and 12 of the Act specifically grant the Commission jurisdiction over the fees involved. Thus the ruling of the court below that the services were not rendered "in connection with" the reorganization of Electric, even if assumed to be correct, would not support the holding that the Commission was without jurisdiction to pass upon the Drexel fee.

Actually the Commission's jurisdiction to pass upon fees payable by solvent holding companies in carrying on their business affairs is extensive. Thus, a registered holding company, however solvent, may issue and sell its securities except "in accordance with a declaration effective under section 7 and with the order under such section permitting such declaration to become effective". Holding Company Act, Section 6(a), Appendix, *infra*, p. 25. One of the grounds for the Commission's refusing to permit such a declaration to become effective is a finding, pursuant to Section 7(d)(4) of the Act, that:

the fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly,

in connection with the issue, sale, or distribution of the security are not reasonable.

Nor may any registered holding company, however solvent, acquire, directly or indirectly, any securities or utility assets unless "the acquisition has been approved by the Commission under section 10" (Section 9(a)). One of the grounds for refusing approval of such an acquisition is a Commission finding, pursuant to Section 10(b)(2) of the Act, that:

the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable \* \* \*.

Pursuant to Section 12(d) of the Act, no registered holding company, however solvent, may sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding "fees and commissions," among other things, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

Finally, pursuant to Section 12(f) of the Act, no registered holding company, however solvent, may negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under the Act, with any company in the same holding company system, in contravention of such rules and regulations or orders regarding



"costs," among other things, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

Thus the solvency of Bond and Share, and the fact that it was not the company being reorganized in these proceedings, do not provide an immunity from the Commission's statutory fee jurisdiction. It is not necessary to decide whether Sections 10 and 12 alone supply an adequate basis for the Commission's exercise of jurisdiction with respect to the Drexel fee. Rather, with Section 7, they support the general authority of the Commission to pass upon fees and expenses payable by solvent registered holding companies in connection with ordinary financial transactions, and refute the reasons advanced by the Court below for holding that Section 11 of the Act, requiring the Commission to pass upon reorganization fees and expenses incurred in the simplification and integration of holding company systems, excludes jurisdiction over fees payable by a registered holding company for services rendered to protect its interests in the reorganization of a subsidiary.

The issuance of securities, the acquisition of utility assets, the disposition of securities, and the intrasystem transactions to which Sections 7, 10, and 12 of the Act apply are all acts generally performed by solvent companies in connection with their own business, and also by parent companies in connection with the reorganization of their subsidiaries. As the court suggested in *In re Electric*

*Bond and Share Co.*, 80 F. Supp. 795, 798 (S. D. N.Y.), since Congress granted the Commission such authority over those financial matters, it is not plausible to assume that less extensive power was granted in a Section 11 reorganization.

2. It is submitted that through Sections 11(e) and (f) of the Act Congress intentionally granted the Commission full jurisdiction over all fees incurred by regulated companies in connection with Section 11 reorganizations.

A major purpose of the Congress in providing for Commission supervision over fees and expenses incurred in reorganizations pursuant to the Act was the protection of investors in holding company securities. Thus Senator Wheeler, sponsor of the legislation in the Senate, stated:<sup>4</sup>

That brings me to the last point—the protection of the holding-company investor by the Securities and Exchange Commission. I do not blame the average investor for shuddering at the very word “reorganization.” In the usual process of reorganization and regrouping of properties the investor might be given the same milking by reorganizing bankers and their lawyers that he has had to take in railroads, real estate, and every other kind of corporate reorganization. To meet that very danger the bill puts the entire process of reorganization, including fees and so-called “re-

<sup>4</sup> 79 Cong. Record 4607, March 28, 1935.

organization plans", under the control of the Securities and Exchange Commission.

In reporting the proposed legislation to the Senate, the Senate Committee on Interstate Commerce stated with respect to Section 11: <sup>5</sup>

Subsections (a), (e), and (f) outline the procedure whereby the reorganization plans must be approved by the Commission and carried out under the supervision of the Federal courts. \* \* \* Under these subsections, Commission approval of reorganization plans and supervision of the conditions under which such plans are prepared will make it impossible for a group of favored insiders to continue their domination over inarticulate and helpless minorities, or even as is often the case, majorities. *Fees, expenses, and remunerations paid in connection with any such reorganization*, whether under Section 77B of the Bankruptcy Act or otherwise, are made subject to the approval of the Commission. [Emphasis supplied.]

Section 11(e) of the Act gives the Commission the power, and imposes upon it the duty, to determine whether a plan of reorganization submitted to it is "fair and equitable to the persons affected by such plan." According to the analysis of the court in *In re Electric Bond & Share Co.*, *supra*, jurisdiction over fees "is an inseparable part of the

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<sup>5</sup> Senate Report No. 621, 74th Cong., 1st Sess., at p. 33. See also the same report at pp. 16-17, 55-60.

determination of whether a plan is fair and equitable, \* \* \*. If the Securities and Exchange Commission has no power over fees, it may well approve a plan which in the end is not in its judgment fair and equitable, because of the distribution of fees authorized by other jurisdictions." This view "is supported by the very broad powers which are bestowed upon it [the Commission] in the opening words of section 11(e)," providing that plans shall be submitted in "accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers."

The power over fees which is impliedly granted by Section 11(e) is expressly granted by the last sentence of Section 11(f), which gives the Commission authority to require approval of "fees, expenses, and remuneration paid in connection with any reorganization, dissolution, liquidation, bankruptcy or receivership of a registered holding company or a subsidiary thereof." It is this section which is referred to by this Court in *American Power & Light Co. v. S.E.C.*, 329 U. S. 90, 114.

The particular issue here is the application of these sections to a fee application where the "persons affected" are the investors in the parent company, and where the funds to pay the fee are not withdrawn from the assets of the company under reorganization, but are contributed directly by the parent company. Decisions of this Court in comparable situations, however, are helpful in the application of the Act in these particular circum-

stances. In *American Power and Light Co. v. S.E.C.*, 325 U. S. 385, it was held that under Section 24(a) of the Act a stockholder of Bond and Share was a "person aggrieved" by a Commission order directed to an operating subsidiary of a holding company subsidiary of Bond and Share, giving to the stockholder of the grandparent company the right to seek judicial review of the Commission order. Here the stockholders of Bond and Share are far more directly concerned. The plan itself provided for the acquisition by Bond and Share, in exchange for its holdings of securities in Electric, of new securities with a market value of approximately \$65,000,000 at the time of consummation.<sup>6</sup> It also provided for the payment by Bond and Share to Electric of \$2,200,000 in settlement of claims. The interests of Bond and Share and its stockholders were among the most important of those dealt with in the plan proceedings. Bond and Share's stockholders are "affected" by the fees to be paid by Bond and Share for services rendered in connection with the proceedings, just as they and the direct stockholders of Electric are "affected" by the fees to be paid by Electric itself.

3. The opinion below suggests that the fee jurisdiction conferred by Section 11(f) should be construed as inapplicable to any reorganization proceeding under Section 11(e) of the Act, unless a

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<sup>6</sup> Pursuant to the plan, Bond and Share received 803,329 shares of the common stock of Middle South Utilities, Inc., and 2,870,653 shares of the common stock of United Gas Corporation.

trustee or receiver is actually appointed therein.<sup>7</sup> That interpretation would contravene *Halsted v. Securities and Exchange Commission*, 182 F. 2d 660 (C.A. D.C.), where Section 11(f) was held to be applicable in a Section 11(e) reorganization. See also *S.E.C. v. Cogan*, 201 F. 2d 78, 81 (C.A. 9).

The legislative history and the pattern of regulation under the statute show that the words "in any such proceeding" in the last sentence of Section 11(f) were intended to relate back to the types of proceeding specified in the clause immediately preceding those words, or to all court proceedings covered by the first two sentences of Section 11(f) in which a trustee or receiver might be appointed,<sup>8</sup> but were not to be limited to a proceeding in which a trustee or receiver is actually appointed.<sup>9</sup> An

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<sup>7</sup> Section 11(e) empowers the enforcement court to appoint a trustee, but that power has never been exercised in any of the proceedings (over 100 in number) for enforcement of Section 11(e) plans.

<sup>8</sup> Subsections (d) and (e) of Section 11 of the Act, like Section 77B of the Bankruptcy Act in effect when the Holding Company Act was passed, authorize the enforcement court to appoint a trustee, but do not require such an appointment.

<sup>9</sup> Section 11(f) as originally drafted (§ 11(d) of S. 1725, and § 10(d) of H. R. 5423, introduced February 6, 1935), and as reported to the Senate (§ 11(f) of S. 2796, reported May 14, 1935), started with a provision authorizing the Commission to institute proceedings for the reorganization of regulated companies pursuant to Section 77B of the Bankruptcy Act. The sentence conferring fee jurisdiction then used the phrase "whether under said Section 77B or otherwise" instead of the words "in any such proceeding". Later (June 7, 1935, 79 Cong. Rec. 8844-5) the Senate sponsors of the Bill proposed and the Senate adopted an amendment to the first two sentences of Section 11 (f), eliminating all reference to Section 77B. There was no proposal before the Committee or on the floor of the Senate to restrict the Commission's jurisdiction over fees to be



interpretation of Section 11(f) that would permit Commission supervision over fees only in proceedings where a court has appointed a receiver or trustee and is itself in a position to supervise fees and expenses, but would deny the Commission any supervision over such matters where the entire reorganization is conducted before the Commission, would make no statutory sense and would thwart the intent of Congress.

Basically, however, the heart of the opinion below appears to be that the fees are not paid "in connection with" the reorganization as required by Section 11(f) because they are paid not out of the assets of the reorganized company, but by one of its security holders. On that issue the decision of this Court in *Leiman v. Guttman*, 336 U. S. 1, is very persuasive. That case decided the question whether, under Chapter X, the bankruptcy court has exclusive jurisdiction of counsel fees whether paid out of the estate or paid by stockholders directly. This Court upheld the exclusive jurisdic-

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paid in connection with "any reorganization, dissolution, liquidation, bankruptcy, or receivership" of a regulated company. No amendment of Section 11(f) was adopted, except as proposed by the sponsors of the Act. Without any reported discussion in committee or on the floor, the words "whether under said Section 77B or otherwise" were dropped from the fee sentence of Section 11(f), and the words "in any such proceedings" substituted (§ 11(f) of S. 2796, ordered printed June 7, 1935, showing amendments agreed to), for the sole purpose of reflecting the elimination of all prior references to Section 77B. Still later (§ 11(f) of S. 2796 as passed by the Senate June 11, 1935), and again without any discussion or indication of intent to limit fee jurisdiction, the word "proceeding" was substituted for the word "proceedings".

tion of the bankruptcy court, stating (336 U. S. 1, 8):

\* \* \* § 221 (4) is written in pervasive terms—it applies to “all payments” for services “in connection with” the proceeding or “in connection with” the plan and “incident to” the reorganization, whoever pays them. A statute establishing such broad supervision over committees cannot be presumed to be niggardly in its grant of authority when it deals with the matter which of all the others has the most direct impact on those whom it aims to protect.

\* \* \* The statute was designed to police the return which all stockholders obtain from reorganization plans. The net return cannot be kept under supervision if private arrangements expressed in escrow agreements are to control. For the impact of excessive fee claims is the same whether they are charged directly against the estate or against the claim which represents a proportionate interest in the estate.

Moreover, the opinion below is in conflict in principle, at least, with *Halsted v. Securities and Exchange Commission*, 182 F. 2d 660 (C.A. D.C.). That case arose from an application of a committee for stockholders of a registered holding company, filed pursuant to Section 12(e) of the Act, for permission to solicit stockholders for contributions to finance committee operations in a Section 11(e)

reorganization. The Commission found its authority to refuse such permission in the fee provisions of Section 11(f), and the court upheld that interpretation. The court found (at p. 666) that the Commission's authority over fees "would be of little worth or significance if a court were to compel the Commission at the present stage of the case to permit the type of activity here contemplated." It also stated (182 F. 2d at 665):

What is really in issue in this case is not representation; it is fees. \* \* \* The express provisions of section 11(f), quoted above, give the Commission direct control over the fees to be allowed in enumerated proceedings under the Act. We cannot ignore this provision, or invite its evasion. Under a closely comparable provision of the Chandler Act, the Supreme Court has recently declared that investors are entitled to full protection, even as against their own contractual arrangements. [Citing and quoting from *Leiman v. Guttman*, *supra*]

The court below did not cite *Leiman v. Guttman*, and attempted to distinguish the *Halsted* case on the ground that there the committee announced that it intended to seek reimbursement from the assets of the company undergoing reorganization. But, here too, Bond and Share sought reimbursement from the estate of Electric, and did not recede from that position until after the Commission had passed upon the amount of the fee, had denied the application for reimbursement, and had applied to

the district court for enforcement of its decision.<sup>10</sup>

4. It should not be assumed that the payment of fees by a parent for services rendered to it in connection with the reorganization of a subsidiary is an unusual or unimportant feature in the reorganization of holding company systems. In many systems similar to Bond and Share's the top company can bring itself into compliance with the Act only through the elimination or reorganization of its subsidiary companies. When these companies are not one hundred percent owned by the parent company, it is right and proper that they should have their own independent counsel and experts to protect the interests of all of their security holders. It is equally appropriate that the top companies should employ the services of counsel and experts to protect their own interests for the benefit of their own security holders. In a strict corporate sense the reorganization may be the reorganization of a subsidiary, but in the terms of the act it is a step toward bringing the whole system into conformity with the standards of the Act and, in order that all security holders may be protected, all phases of it must be subject to Commission jurisdiction. Under the holding of the court below a large seg-

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<sup>10</sup> In *The United Corporation v. S.E.C.*, No. 99, pending on petition for certiorari to the Third Circuit, petitioner asserts that the decision of the Court of Appeals (211 F. 2d 231) is in conflict with the decisions of the court below in this case. In the *United* case it was held that the parent was not entitled to reimbursement for fees and expenses incurred in the reorganization of its subsidiary. The same issue was involved in the Commission's order denying Bond and Share reimbursement from Electric, but was not the subject of appeal and was therefore not before the court below.

ment of the fees in these reorganizations would go unreviewed.

As an example, we may refer to the proceedings under section 11 with respect to the Bond and Share system. Most of the proceedings for the simplification of the system and the elimination of control over non-retainable properties have involved the reorganization of subsidiary companies, rather than of Bond and Share itself. From June 1946 through March 1954 the Commission has had occasion to pass upon requests by Bond and Share to pay approximately \$1,232,000 to persons so retained, \$460,000 in proceedings for the reorganization of Bond and Share itself, and \$772,000 in proceedings for the reorganization of subsidiary companies. Approximately \$1,070,000 was allowed by the Commission, \$408,000 in proceedings for the reorganization of Bond and Share itself, and \$672,000 in proceedings for the reorganization of subsidiary companies.<sup>11</sup>

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<sup>11</sup> Proceedings for the reorganization of Bond and Share: *Electric Bond and Share Company*, Holding Company Act Releases No. 8084 (March 26, 1948), No. 11,903 (May 11, 1953), and No. 11,978 (June 5, 1953). Applications are pending for additional such allowances aggregating \$276,500.

Proceedings for the reorganization of subsidiary companies other than Electric: *United Gas Corporation*, Holding Company Act Releases No. 5677 (March 21, 1945) and No. 6734 (June 21, 1946); *Pennsylvania Power & Light Company*, Holding Company Act Releases No. 6949 (October 17, 1946) and 7599 (July 24, 1947), original request shown in transcript pp. 538-539, File No. 54-128-1-5; *National Power & Light Company*, Holding Company Act Release No. 7172 (January 31, 1947); *American Power & Light Company*, Holding Company Act Releases No. 11,517 (October 1, 1952) and 11,904 (May 11, 1953); *Portland Gas & Coke Company*, Holding Company

Thus the decision below would deny the Commission any supervision whatsoever over more than half of the fees paid by Bond and Share in reorganizations to effectuate compliance with Section 11.

Throughout its administration of Section 11 of the Act, the Commission has passed upon the fees to be paid to representatives of parent holding companies for services rendered in connection with the reorganization of their subsidiaries.<sup>12</sup> Until the

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Act Release No. 11,560 (October 31, 1952); *American & Foreign Power Company*, Holding Company Act Release No. 11,976 (June 5, 1953).

<sup>12</sup> See *Public Service Corp. of N. J.*, Holding Company Act Release No. 12,000 (June 16, 1953), affirmed in part, reversed in part, on other issues, *In re Public Service Corp.*, 211 F. 2d 231 (C.A. 3); *Eastern Gas & Fuel Associates*, H.C.A. Release No. 11,954 (May 29, 1953), enforced in part, reversed in part, on other issues (D. Mass., Civil Action No. 50-168, Dec. 23, 1953); *Niagara Hudson Power Corp.*, H.C.A. Release No. 11,667 (January 14, 1953), approved and enforced, 114 F. Supp. 683 (N.D. N.Y.), appeal on another issue pending; *Bauer, Trustee of Pittsburgh Rys. Co. and Philadelphia Co.*, H.C.A. Release No. 11,592 (November 18, 1952); *Interstate Power Co.*, H.C.A. Release No. 11,359 (June 26, 1952); *Northern States Power Co. (Del.)*, H.C.A. Release No. 11,145 (April 8, 1952), approved in part and disapproved in part, on other issues, 119 F. Supp. 331 (D. Minn.), affirmed, C.A. 8, April 19, 1954; *The North American Co.*, H.C.A. Releases No. 10,583 (May 28, 1951) and 10,304 (December 21, 1950); *National Power & Light Co.*, H.C.A. Release No. 10,321 (December 28, 1950); *The North American Co.*, H.C.A. Release No. 10,256 (November 30, 1950); *Pennsylvania Edison Co.*, H.C.A. Release No. 9988 (July 21, 1950); *Central States Utilities Corp.*, H.C.A. Release 9411 (October 10, 1949); *Market Street Ry. Co.*, H.C.A. Release No. 9376 (September 30, 1949); approved in part and disapproved in part, on other issues unreported, N.D. Calif., Civil Action No. 29,723, July 11, 1950, affirmed *sub nom. S.E.C. v. Cogan*, 201 F. 2d 78 (C.A. 9); *Louisville Gas & Electric Co. (Del.)*, H.C.A. Release No. 9346 (September 16, 1949); *The Middle West Corp.*, H.C.A. Release No. 8547 (October 1, 1948); *Central Public*



present case, no objection has been made to the exercise of jurisdiction over such allowances.<sup>13</sup>

There are presently pending before the Commission in various stages at least four reorganizations, where fee applications have been filed and the question at issue is involved. In the case of the Standard Power & Light Corporation system, the claims which involve this issue, in whole or in part, run over \$3,500,000.<sup>14</sup> In the United Corporation, Northern New England, and Pennsylvania Gas and Electric systems comparable issues are involved.

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*Utility Corp.*, H.C.A. Release No. 8468 (August 25, 1948); *Scranton-Spring Brook Water Service Co.*, H.C.A. Release No. 8358 (July 15, 1948); *The United Gas Improvement Co.*, H.C.A. Release No. 8321 (June 29, 1948); *Buffalo, Niagara & Eastern Power Corp.*, H.C.A. Release No. 8024 (March 9, 1948); *Central States Power & Light Corp.*, H.C.A. Release No. 7916 (December 5, 1947); *Midland Utilities Co.*, H.C.A. Release No. 7735 (September 23, 1947); *The Laclede Gas Light Co.*, H.C.A. Releases No. 6954 (October 21, 1946) and No. 6306 (October 17, 1945); *The United Corp.*, H.C.A. Release No. 6509 (March 22, 1946); *Columbia Gas & Electric Corp.*, H.C.A. Release No. 5460 (December 1, 1944), 17 S.E.C. 549, approved and enforced, unreported, D. Del., Civil Action No. 288, May 18, 1945; *Cities Service Co.*, H.C.A. Release No. 4944 (March 14, 1944), 15 S.E.C. 536; *Puget Sound Power & Light Co.*, H.C.A. Release No. 4835 (January 13, 1944); and *Derby Gas & Electric Corp.*, H.C.A. Release No. 3236 (December 30, 1941).

<sup>13</sup> On the weight to be accorded the consistent interpretation of a statute by the agency designated by Congress to administer it, see *Norwegian Nitrogen Products Co. v. United States*, 288 U. S. 294, 315; *United States v. American Trucking Ass'n.*, 310 U. S. 534, 549; *North American Utility Securities Corp. v. Posen*, 176 F. 2d 194, 197 (C.A. 2).

<sup>14</sup> Fee claims against registered holding companies frequently involve a single amount for services rendered to the company both in connection with its own reorganization, and in connection with reorganizations of subsidiary companies.

## CONCLUSION

For the reasons that the decision below contravenes the word and the spirit of the Holding Company Act on a jurisdictional issue of importance in reorganizations, that it conflicts in principle with a decision of the Court of Appeals for the District of Columbia Circuit, and that it would upset a well-established construction of the statute by the Securities and Exchange Commission, and impair the Commission's ability to give to investors the protection hitherto available under Section 11, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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JUNE, 1954.

## APPENDIX

The following provisions of the Public Utility Holding Company Act of 1935 (49 Stat. 803, 15 U.S.C. 79a *et seq.*) are pertinent:

SEC. 6(a) Except in accordance with a declaration effective under section 7 and with the order under such section permitting such declaration to become effective, it shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly (1) to issue or sell any security of such company; or (2) to exercise any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security of such company.

\* \* \* \* \*

SEC. 7 \* \* \*

(d) If the requirements of subsections (c) and (g) are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that—

\* \* \* \* \*

(4) the fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly, in connection with the issue, sale,

or distribution of the security are not reasonable;

\* \* \* \* \*

SEC. 9(a) Unless the acquisition has been approved by the Commission under section 10, it shall be unlawful—

(1) for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to acquire, directly or indirectly, any securities or utility assets or any other interest in any business.

\* \* \* \* \*

SEC. 10 \* \* \*

(b) If the requirements of subsection (f) are satisfied, the Commission shall approve the acquisition unless the Commission finds that—

\* \* \* \* \*

(2) in case of the acquisition of securities or utility assets, the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired; \* \* \*

\* \* \* \* \*

## SEC. 11 \* \* \*

(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such

extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

(f) In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court may constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed, and in any such proceeding the court shall not appoint any person other than the Commission as trustee or receiver without notifying the Commission and giving it an opportunity to be heard before making any such appointment. In no proceeding under this section or otherwise shall the Commission be appointed as trustee or receiver without its express consent. In any such proceeding a reorganization plan for a registered holding company or any subsidiary com-



pany thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission.

\* \* \* \* \*

## SEC. 12 \* \* \*

(d) It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules

and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of the title or the rules, regulations, or orders thereunder.

\* \* \* \* \*

(f) It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this title, with any company in the same holding-company system or with any affiliate of a company in such holding-company system in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules and regulations thereunder.

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No. 153

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**In the Supreme Court of the United States**

OCTOBER TERM, 1954

SECURITIES AND EXCHANGE COMMISSION,  
PETITIONER

v.

DREXEL & COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SECOND  
CIRCUIT

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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This memorandum is limited to the point argued at pages 8-12 of the brief in opposition where the respondent seeks to distinguish four cases pending when the petition was filed. The major basis for distinction alleged as to three of those cases is the claim that "the parent company itself was in each case reorganized or dissolved in the proceedings," and that "the estate and assets of the parent company were in each case before

the Commission and were dealt with by the plan which the Commission approved as fair." (Br. in Opp., p. 11.) The respondent claims that in each of these four reorganizations the Commission "clearly has complete jurisdiction over all fees there claimed." (Br. in Opp., p. 9.)

It is submitted that not only does the Commission indeed have jurisdiction over the fees claimed in these proceedings, but also that there is no essential distinction between them and the instant case. The important common element is that the reorganization of the subsidiaries was essential to achieve compliance by the parent with the Holding Company Act. The mere fact that the parent may have applied to the Commission under Section 11 (which Bond and Share also did, incidentally, in the present case—see Petition p. 3) rather than under Sections 9, 10, and 12, makes no difference in the power of the Commission to disapprove fees.

In the Standard Power & Light Corporation case (Br. in Opp., p. 9), fee claims were asserted against Standard Power & Light Corporation and against Standard Gas and Electric Company not only with respect to proceedings in which the companies themselves were being directly reorganized, but also in proceedings for the reorganization of subsidiary companies in which Standard Power & Light Corporation and Standard Gas and Electric Company were involved only in the same sense that Bond and Share was

involved in the Electric reorganization. For example, the claim of Guggenheimer & Untermeyer, in the amount of \$3,500,000, includes claims for services in the reorganizations of Northern States Power Company<sup>1</sup> and of Pittsburgh Railways Company,<sup>2</sup> and in connection with the consolidation, recapitalization, and sale of the gas properties of Philadelphia Company.<sup>3</sup> All of these proceedings contributed to the ultimate reorganization of the parent companies, but that is precisely the situation involved in the instant case. In *In re Standard Gas and Electric Company* (D. Del., August 30, 1954), the court declined to pass upon the contention of Guggenheimer & Untermeyer that the court had plenary jurisdiction to pass upon their claim for fees, and that the Commission was without jurisdiction, stating:

Moreover, there is pending before the Supreme Court the important statutory issues as to the source of jurisdictional right in connection with fees and allow-

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<sup>1</sup> See *Northern States Power Company*, 27 S. E. C. 321 (1947), 27 S. E. C. 547 (1948); Guggenheimer & Untermeyer Fee Application, Commission File Nos. 54-172, et al., pp. 56-72.

<sup>2</sup> See *Elmer E. Bauer, Trustee of Pittsburgh Railways Company, Debtor*, Holding Company Act Release No. 9759 (1950); Guggenheimer & Untermeyer Fee Application, Commission File Nos. 54-172 et al., pp. 132-143.

<sup>3</sup> See *Philadelphia Company*, Holding Company Act Release No. 8326 (1948); Guggenheimer & Untermeyer Fee Application, Commission File Nos. 54-172 et al., pp. 144-150.



ances under the Public Utility Holding Company Act of 1935. [Citing the instant case.]

In *Northern New England Company* (Commission File No. 59-15), plans were filed in the same proceedings both by Northern New England Company (the top company) for its liquidation, and by New England Public Service Company (the direct subsidiary of Northern New England Company) for its liquidation. Fee claims against Northern New England were based in part upon services rendered in the reorganization of the subsidiary. Some of the claims for fees and expenses pending at the time the petition was filed have been disposed of by order of the Commission,<sup>4</sup> and it now appears that the one remaining claim for services to the top company in the reorganization of its direct subsidiary may likewise be settled in the near future.

*Pennsylvania Gas & Electric Corporation* (Commission Files Nos. 54-177 and 54-165) involved a series of plans, some of them providing directly for the reorganization of the top company, and others providing for subsidiary company reorganizations.<sup>5</sup> Here, too, some of the

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<sup>4</sup> *Northern New England Company*, Holding Company Act Release No. 12605 (July 29, 1954).

<sup>5</sup> See *Pennsylvania Gas & Electric Corporation*, Holding Company Act Releases Nos. 8025 (March 9, 1948), 8490 (September 3, 1948), 9574 (December 22, 1949), 11298 (June 5, 1952), and 11600 (December 15, 1952).

claims for fees and expenses have been settled and approved by the Commission since the filing of the petition.<sup>\*</sup> Hearings are to be held upon the claim of representatives of Class A stockholders of the top corporation for approximately \$150,000 for services rendered, which related in part to its own reorganization and in part to the reorganizations of subsidiary companies.

The application of United Corporation for reimbursement of expenses incurred in the reorganization of its subsidiary, *Columbia Gas & Electric Corporation* (File No. 54-117), is still pending. The question whether the Commission also will be required to pass upon the amount of the fees and expenses properly payable by United Corporation itself, if reimbursement is denied, is essentially the question here involved.

The basic element in all of these cases, including the Electric reorganization, is the fact that the reorganization of the subsidiary company is part and parcel of the parent's reorganization in order to effect system compliance with Section 11 (b) of the Act. The Electric plan proceeding was one of the many facets of the reorganization of Bond and Share and its holding company system. The fact that Bond and Share ultimately filed a separate application considered jointly with the plan filed by Electric, rather than joining in the

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<sup>\*</sup> *Pennsylvania Gas & Electric Corporation*, Holding Company Act Release No. 12628 (August 19, 1954).

filing of the plan itself, does not distinguish the cases referred to by the respondent, primarily because the difference is immaterial, but also because the same situation is involved to some extent in those cases.

There should be no confusion arising from the assertion that "the estate and assets of the parent company were in each case before the Commission." This does not mean that there was in those cases a receivership or trusteeship, but only that the proposed steps by the parent were specifically subject to the approval of the Commission. In the same sense the estate and assets of Bond and Share were before the Commission in the present case because of its applications under Sections 9, 10, and 12 of the Public Utility Holding Company Act of 1935. (See Petition, pp. 3-4, 10-11.)

We submit, therefore, that the distinctions drawn in the Brief in Opposition are without real significance, either substantively or procedurally.

Respectfully submitted,

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# In the Supreme Court of the United States

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SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

DREXEL & COMPANY

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT

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BRIEF FOR THE SECURITIES AND EXCHANGE  
COMMISSION

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# In the Supreme Court of the United States

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No. 153

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

*v.*

DRENEL & COMPANY

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*ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT*

---

BRIEF FOR THE SECURITIES AND EXCHANGE  
COMMISSION

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## OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 288-289) is not reported. The opinion of the Court of Appeals (R. 305-312) is reported in 210 F. 2d 585.

## JURISDICTION

The judgment of the Court of Appeals was entered February 25, 1954 (R. 313). The time for filing a petition for a writ of certiorari was ex-

tended to June 21, 1954 (R. 319). The petition for a writ of certiorari was filed on June 21, 1954, and granted on October 14, 1954 (R. 341). The jurisdiction of this Court rests on 28 U.S.C. 1254. See also Section 25 of the Public Utility Holding Company Act of 1935, 49 Stat. 835, 15 U.S.C. 79y.

#### QUESTION PRESENTED

Whether, under the Public Utility Holding Company Act of 1935, the Securities and Exchange Commission's jurisdiction over fees payable by registered holding companies covers a fee claimed for services for the benefit of a registered holding company parent incident to the reorganization of its subsidiary and to related transactions by the parent, when the fee is to be paid by the parent and not out of the assets of the subsidiary in reorganization.

#### STATUTE INVOLVED

The pertinent provisions of the Public Utility Holding Company Act of 1935 (49 Stat. 803, 15 U.S.C. 79a *et seq.*) are set forth in the Appendix, *infra*, pp. 39-45.

#### STATEMENT

This case presents the question whether the Securities and Exchange Commission has statutory jurisdiction pursuant to the Public Utility Holding Company Act of 1935 to pass upon a fee payable by Electric Bond and Share Company ("Bond and Share"), a registered holding company, for services rendered for its benefit in consolidated proceedings which dealt both with the re-



organization of a Bond and Share subsidiary, Electric Power & Light Corporation ("Electric"), and with related transactions by Bond and Share itself.

The initial proceeding which ultimately led to the reorganization of Electric was one instituted by the Commission in 1940, pursuant to Section 11(b)(2) of the Act. Bond and Share, Electric, and various other subsidiaries of Bond and Share were named as respondents. In its order, the Commission directed that hearings be held to determine, *inter alia*, what action, if any, was necessary and should be required to be taken by the respondents, or any of them, "to ensure that the corporate structure or continued existence of any of the respondents herein does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of the holding company system of Electric Bond and Share Company." *Electric Bond and Share Company*, Holding Company Act Release No. 2051, at p. 16.

At that time, Electric was one of five sub-holding companies in the Bond and Share holding company system (R. 218). Bond and Share held approximately 57% of the common stock and approximately 47% of the voting power of Electric (R. 7). Electric itself controlled electric and gas utility subsidiaries operating in the States of Arkansas, Colorado, Idaho, Louisiana, Mississippi, Nevada, Oregon, Utah, and Wyoming, and in the Republic of Mexico (R. 218).

In 1941 the Commission entered an order in that proceeding requiring National Power & Light Company, a sister company of Electric, to dissolve upon the ground that "the corporate structure and continued existence of National unduly and unnecessarily complicate the structure and unfairly and inequitably distribute voting power among the security holders of the holding company system of Bond and Share." *Electric Bond and Share Company*, 9 S.E.C. 978, 1009-1010. Bond and Share as well as National was directed to proceed with due diligence to comply with the dissolution order, "including the submission to us of a plan or plans looking to the final dissolution of National and such further declarations or applications as may be required." *Electric Bond and Share Company*, *supra*, at 1011.<sup>1</sup>

By order dated August 22, 1942, in the same proceeding, the Commission directed that Electric and another sister company, American Power & Light Company, be dissolved for the same reason. Again, Bond and Share as well as Electric and American

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<sup>1</sup> Through a series of transactions, National Power & Light Company ceased to be a holding company and was eliminated, together with its subsidiaries, from the Bond and Share system. See *Electric Bond and Share Company*, 12 S.E.C. 392 (1942); 20 S.E.C. 615 (1945); 21 S.E.C. 143 (1945); 22 S.E.C. 866 (1946); Holding Company Act Releases No. 8445 (1948), 8467 (1948), 8942 (1949), and 10640 (1951). Bond and Share was a party to most of the proceedings and the fees and expenses incurred by it, and payable out of its assets, were passed upon by the Commission. *National Power & Light Company*, Holding Company Act Release No. 7172 (January 31, 1947).

Power & Light Company were directed to proceed with due diligence to submit to the Commission a plan or plans for the effectuation of the order. *Electric Bond and Share Company*, 11 S.E.C. 1146, 1223; Holding Company Act Release No. 3750. The order was affirmed on appeal. *American Power & Light Co. v. S.E.C.*, 141 F. 2d 606 (C.A. 1), affirmed, 329 U.S. 90.<sup>2</sup>

By a series of steps subsequent to the dissolution order, Electric reorganized its subsidiary companies so as to bring them toward conformity with Section 11(b) of the Act, and disposed of certain of its subsidiaries which would be clearly non-retainable under the integration standards set out in Section 11(b)(1) (R. 218). Among the more important steps taken was the reorganization of United Gas Corporation ("United"), a major subsidiary of Electric, pursuant to a plan filed by Bond and Share, Electric, and United. In November, 1944, pursuant to that plan, Electric acquired new United securities, and Bond and Share received

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<sup>2</sup> As in the case of National Power & Light Company, footnote 1, *supra*, American Power & Light Company has complied with the Commission's order that it dissolve. See *American Power & Light Company*, 21 S.E.C. 191, 309 457 (1945); Holding Company Act Releases No. 9359-A (1949), 9389 (1949), 9948 (1950), 10,820 (1951), 11,301 (1952) and 11,797 (1953). Again Bond and Share was a party to the more important aspects of the proceedings and the fees and expenses incurred in connection therewith, payable out of Bond and Share's assets, were passed upon by the Commission. *American Power & Light Company*, Holding Company Act Releases No. 4926 and 4962 (1944), 16 S.E.C. 531 (1944), approved,

\$44,000,000 in cash, in exchange for their former holdings of United securities.<sup>3</sup>

In July, 1945, pursuant to Section 11(e), Bond and Share filed a series of plans for its own reorganization. The first proposal was a partial retirement of the Bond and Share preferred stock through a cash payment to be made in large part out of the proceeds of the United reorganization—a plan which was ultimately approved and enforced. The plans also made provision for the settlement of claims against Bond and Share and its wholly owned subsidiaries asserted by and on behalf of Electric, its sister companies, and their subsidiaries.<sup>4</sup>

In November, 1945, Electric filed a plan pursuant to Section 11(e) as a first step in its dissolution, proposing a voluntary exchange of an unspecified number of shares of the common stock of United for each share of Electric's \$7 and \$6 preferred stock, the exact number of shares to be fixed by subsequent amendment. Electric filed the amendment setting forth the proposed ratios of exchange on May 3, 1946. (R. 218.)

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<sup>3</sup> *United Gas Corporation*, Holding Company Act Releases No. 4926 and 4962 (1944), 16 SEC. 531 (1944), approved, *In re United Gas Corporation*, 58 F. Supp. 501 (D. Del.), affirmed 162 F. 2d 409 (C.A. 3).

The fees and expenses of Bond and Share and of Electric incurred in this proceeding, which were paid out of their respective assets, were passed upon by the Commission. *United Gas Corporation*, Holding Company Act Releases No. 5677 affirmed 162 F. 2d 409 (C.A. 3).

<sup>4</sup> *Electric Bond and Share Company*, 20 SEC. 786, 787, enforced, S.D. N.Y., Civil Action 33-343, November 5, 1945.

Six days later, Bond and Share filed a plan of its own, pursuant to Section 11(e), for the dissolution of Electric. Bond and Share's plan also provided for the settlement of all claims asserted or which might be asserted on behalf of Electric and its past and present subsidiaries against Bond and Share and its wholly-owned subsidiaries. (R. 321-324.)<sup>5</sup>

On July 1, 1946, Electric and Bond and Share jointly filed a Section 11(e) plan in substitution for the plans theretofore filed. This joint plan followed generally the terms of Bond and Share's plan for Electric's dissolution, but prescribed somewhat different treatment of Electric's preferred shareholders, and provided for the payment by Bond and Share of \$2,200,000 in settlement of the claims against Bond and Share and its wholly-owned subsidiaries. (R. 324-330.)

After public hearings, briefs, and oral arguments, this plan was submitted to the Commission for consideration, but subsequent changes in market conditions made it clear that the joint plan was not feasible (R. 218-219).

Thereafter, Electric filed the substitute plan dated March 24, 1948, which (with minor amendments) has since been consummated (R. 219). That plan generally provided for the creation of a new holding company, Middle South Utilities, Inc. ("Middle South"), to which Electric was to trans-

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<sup>5</sup> The settlement proposal had originally constituted a part of the plans filed by Bond and Share for its own reorganization in July 1945. (See p. 6, *supra*).

fer its holdings of the common stocks of its electric utility subsidiaries and certain residual assets; the retirement of the \$6 and \$7 preferred stocks and the second preferred stock of Electric through the distribution to those security holders of shares of Middle South and of United; and distribution of the remaining shares of Middle South and United, to the holders of the common stock and option warrants for the purchase of the common stock of Electric. It also provided for the payment of \$2,200,000 by Bond and Share to Electric in settlement of the intrasystem claims. (R. 4-28, 219-220.)

One week later, Bond and Share filed an application-declaration pursuant to Sections 10, 11, and 12 of the Act (R. 330-339), requesting the necessary Commission approval of its "sale" of its holdings of Electric stock, its "acquisition" of shares of the stocks of United and Middle South, and its payment of \$2,200,000 in settlement of the intrasystem claims.<sup>6</sup> These transactions, and Commission approval thereof, were required in order to permit consummation of the plan. The plan and Bond and Share's amended application-declaration

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<sup>6</sup> Section 2(a)(22) of the Act defines "acquisition" to include "any purchase, acquisition by lease, exchange, merger, consolidation, or other acquisition." Section 2(a)(23) of the Act defines "sale" to include "any sale, disposition by lease, exchange or pledge, or other disposition." In *Electric Bond and Share Company*, Holding Company Act Release No. 11,004 (February 6, 1952), petition for review withdrawn, the Commission held that Sections 9(a) and 10 of the Act were applicable to Bond and Share's acquisition of securities in connection with the reorganization of Electric.

were considered together by the Commission in consolidated proceedings and were approved by order dated March 7, 1949 (R. 36-41), subject to a specific reservation of jurisdiction "to determine the reasonableness and appropriate allocation of all fees and expenses and other remuneration incurred or to be incurred in connection with the said Plan, as amended, and the transactions incident thereto," other than certain fees separately approved as part of the plan (R. 38).

The plan was enforced by order of the United States District Court for the Southern District of New York (R. 41-47), which was affirmed on appeal. *In re Electric Power & Light Corp.*, 176 F. 2d 687 (C.A. 2), stay denied, 337 U.S. 903. As approved and consummated, the plan was substantially the same as filed by Electric in March, 1948.<sup>7</sup>

Drexel & Co. ("Drexel") was retained by Bond and Share in May 1945 (R. 120). No fee was agreed upon, both Drexel and Bond and Share understanding that the amount to be paid would be "such amount as might be approved by the Commission" (R. 193). The firm made studies relating to the potential earnings of Electric, possible types of plans for its dissolution, and the nature of the evidence to be adduced thereon. The bulk of the Drexel work was performed prior to September 20, 1946, by Edward Hopkinson, Jr., the

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<sup>7</sup> Minor changes were required by the Commission's Findings and Opinion dated March 1, 1949, Holding Company Act Release No. 8889, and were embodied in an amendment to the plan filed March 3, 1949 (R. 34-35).



senior partner of the firm, and related directly to the plans theretofore filed by Electric and Bond and Share and subsequently withdrawn. Hopkinson was consulted by Bond and Share in 1947 and 1948, and participated actively in negotiations during February and March 1948, but took no active part thereafter. (R. 153-154, 262-264.)

On April 4 and 5, 1950, hearings were held before the Commission pursuant to the reserved jurisdiction to pass upon fees and expenses. Bond and Share filed a "Petition \* \* \* for Approval of Payment of Fees and Expenses," requesting that the Commission approve aggregate payments of approximately \$265,000 (later increased to \$310,000 (R. 216)), including \$100,000 to Drexel (R. 54-55),\* and a petition for reimbursement by Electric (R. 251).

Drexel filed a "Petition \* \* \* for Approval of Fee for Services on Behalf of Electric Bond and Share Company," together with a supporting statement (R. 59-117). The petition was introduced by the statement:

Drexel & Co. has rendered to and on behalf of Electric Bond and Share Company services in connection with the reorganization of Electric Power & Light Corporation and transactions and matters incident to such reorganization.

It requested the Commission to permit Bond and

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\*The Drexel item appears as a payment to Edward Hopkinson, Jr., the senior partner of the firm (R. 118).

Share to pay the \$100,000 claimed for such services.

By Findings and Opinion and Order dated April 21, 1952, the Commission approved and directed payment of approximately \$590,000 of fees and expenses by Electric, and \$250,000 of fees and expenses by Bond and Share (R. 212-270). Bond and Share's application for reimbursement from Electric was denied, the Commission finding that Bond and Share's services in the proceedings (R. 253)

were not services merely designated to bring Electric into compliance with the Commission's order but were additionally, if not primarily, steps designed to simplify the Bond and Share system and Bond and Share itself at the apex of that system.

\* \* \* Any plan for the compliance of the subholding companies must necessarily have been as a step toward the ultimate resolution of Bond and Share's overall Section 11 problems which were its primary concern.

The Commission further found that \$50,000 represented appropriate compensation for the services rendered Bond and Share by Drexel. Its conclusion was based upon a review of the entire record in the proceeding and upon consideration of Hopkinson's standing in the financial community, the extent and nature of the services, and the approximate time spent in so far as it could be reconstructed (R. 262-264). It was also reached

in the light of the general standards set forth in detail in the opinion (R. 223-228).

On June 19, 1952, the Commission filed in the United States District Court for the Southern District of New York, which had reserved appropriate jurisdiction in its order approving and enforcing the dissolution plan (R. 41-47), a Supplemental Application for approval of the payment and denial of fees and expenses as determined by the Commission (R. 270-277).

Drexel, among others, filed objections to the Commission's Supplemental Application (R. 278-282). Bond and Share did not object in court to the Commission's denial of its claim for reimbursement from Electric.

After a hearing on the Supplemental Application and the objections thereto, the court entered its opinion and order overruling the objections and approving the Commission's order (R. 288-292). Drexel and others appealed. The Court of Appeals reversed the order as to the fee of Drexel "for lack of jurisdiction in the Commission," and otherwise affirmed it (R. 312).

The opinion below concedes that the Commission's power and duty to determine whether a Section 11(e) plan is "fair and equitable to the persons affected" gives the Commission jurisdiction to determine what allowances shall be made for fees and expenses (R. 307). It holds, however, that a fee payment by Bond and Share itself does not "affect" its stockholders in such a way as to be

relevant in determining whether Electric's plan is fair and equitable (R. 308). The opinion considers also the provisions of Section 11(f) of the Act, authorizing the Commission to pass upon fees payable "in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof". However, it interprets Section 11(f) as limited to proceedings where a receiver or trustee has been appointed, and holds that the fee to be paid by Bond and Share to Drexel is not a fee paid "in connection with" the proceeding for the dissolution of Electric within the meaning of the quoted phrase as used in Section 11(f) (R. 210). The court does not mention Bond and Share's application for Commission approval of its transactions incident to the plan, the Commission's fee jurisdiction provided in Sections 7, 10, and 12 of the Act, or the relationship of Electric's dissolution to the reorganization of Bond and Share and its holding-company system.

#### SUMMARY OF ARGUMENT

### I

The decision below that the Commission lacks jurisdiction over the Drexel fee is based upon the concept that the fee is "but a business expense of Bond and Share", described as "a solvent corporation whose business affairs are conducted by its own management." (R. 308, 307). Such a concept ignores the regulatory authority of the Com-

mission over Bond and Share because of its status as a registered holding company. As such, substantially all of its major financial transactions, whether or not they involve a reorganization, are subject to Commission approval including approval of fees incurred in connection therewith.

In order to construe properly the extent of the Commission's jurisdiction under Section 11, it must be considered in the context of the Act, and not in isolation from the regulatory powers of the Commission specified in other sections of the Act. *S.E.C. v. Central-Illinois Securities Corp.*, 338 U. S. 96, 122. Sections 7, 10, and 12 of the Act (Appendix, *infra*, pp. 39, 40 and 44) require the Commission to pass upon fees and expenses incurred with relation to the transactions regulated under those sections. Bond and Share's application for approval of its own transactions incident to Electric's dissolution was filed herein pursuant to Sections 10 and 12, as well as Section 11. Commission approval of those transactions was necessary, both because they involved one phase of the reorganization of Bond and Share itself, and also because they involved the acquisition of securities, sale of securities, and settlement of intrasystem claims, regulated pursuant to Sections 10 and 12. The specific grant of fee jurisdiction in Sections 10 and 12 is itself a basis for the Commission's exercise of jurisdiction with respect to the Drexel fee. More importantly, with Section 7, the fee provisions of those sections support the general authority of the

Commission to pass upon fees and expenses payable by registered holding companies in connection with all proceedings before the Commission, including Section 11 reorganizations.

## II

The primary source of the Commission's jurisdiction over the Drexel fee derives from the fact that the services were rendered in connection with a reorganization under Section 11 of the Act. The Congress was particularly concerned lest investors be exploited by the payment of unreasonable fees during the course of the reorganizations made necessary by the provisions of that Section. Thus, under Section 11(c), it conferred upon the Commission the authority and the duty to determine whether a reorganization plan is "fair and equitable to the persons affected by such plan." The courts, including the court below (R. 308), have agreed with the Commission that supervision over the payment of fees is an integral part of its authority to pass upon the fairness and equitableness of plans. *Standard Gas & Electric Co. v. S.E.C.*, 212 F. 2d 407, 410 (C.A. 8), certiorari denied, 348 U.S. 831; *In re Public Service Corp. of N. J.*, 211 F. 2d 231, 232-233 (C.A. 3), certiorari denied, 348 U.S. 820; *In re Electric Bond & Share Co.*, 80 F. Supp. 795 (S.D.N.Y.). This Court held in *American Power & Light Co. v. S.E.C.*, 325 U.S. 385, that under certain circumstances a security holder of a parent holding company is, for purposes of

standing to appeal, a "person aggrieved" by an order issued in connection with the reorganization of a subsidiary. By analogy, such a security holder should be held a "person affected" within the provision of Section 11(e) quoted above. Where, as in the present case, the dissolution of the subsidiary was a necessary part of the parent's program to comply with the Act and where the fees charged against the parent are substantial, it is apparent that the amount of such fees is a material element in the fairness and equity of the plan as it affects the security holders of the parent.

Moreover, the last sentence of Section 11(f), which gives the Commission authority to require approval of fees, expenses, and remuneration paid in connection with any reorganization, dissolution, liquidation, bankruptcy or receivership of a registered holding company or a subsidiary thereof, is properly to be construed to apply to the fees incurred by Bond and Share in the present case. In suggesting that that Section applies only to reorganizations in which a receiver has been appointed, the court below differs from the position taken in *Halsted v. S.E.C.*, 182 F. 2d 660 (C.A. D.C.), certiorari denied, 340 U.S. 834; *S.E.C. v. Cogan*, 201 F. 2d 78, 81 (C.A. 9); and *American Power & Light Co. v. S.E.C.*, 329 U.S. 90, 111. The interpretation of the court below also conflicts with the legislative history and the essential purpose of Section 11.

Both the dissolution of Electric and the transactions by Bond and Share which grew out of the



dissolution were a necessary part of the reorganization of Bond and Share and its holding company system. As Bond and Share stated in its application-declaration, "The proposed transactions are steps in compliance by Bond and Share and Electric with Section 11 of the Act \* \* \*" (R. 334). The opinion of this Court in *Leiman v. Guttman*, 336 U.S. 1, a Chapter X case, is persuasive authority for the proposition that reorganization fees, although not paid from the assets of the estate, are nevertheless subject to the control of the authority supervising the reorganization.

Throughout the history of the Act, the Commission has supervised the fees to be paid to representatives of parent holding companies by the parents themselves for services rendered in connection with the reorganization of their subsidiaries. Such a consistent administrative interpretation is, of course, entitled to substantial weight.

#### ARGUMENT

Congress, in the Public Utility Holding Company Act of 1935, has delegated to the Securities and Exchange Commission broad jurisdiction to supervise the payment of fees by registered holding companies. Thus, fees and expenses payable in connection with reorganizations to effect compliance with Section 11 of the Act, as well as fees incurred in connection with the issuance, sale, and acquisition of securities and properties, and intra-system transactions, are made subject to ap-

proval by the Commission. Drexel's services were rendered in consolidated proceedings for the dissolution of Electric and related transactions by the parent, Bond and Share, which constituted integral parts of the reorganization of Bond and Share and its holding-company system. The Commission was therefore authorized and required by the statute to determine the reasonableness of the fee which Bond and Share proposed to pay to Drexel.

- I. The Commission's jurisdiction over the fees to be paid by Bond and Share is supported by the general statutory authority to control fees and expenses payable by registered holding companies in connection with their financial transactions.**

As Bond and Share is a holding company registered under the Act, substantially all of its major financial transactions are subject to regulation by the Commission irrespective of whether such transactions are incidental to a reorganization pursuant to the Act. In addition, Bond and Share, as a registered holding company, is subject to the reorganization jurisdiction which Section 11 of the Act confers upon the Commission. Both the regulatory jurisdiction and the reorganization jurisdiction of the Commission encompass supervision over fees payable by registered holding companies.

The reorganization jurisdiction of the Commission cannot be construed properly from the words of Section 11 alone, read "in comparative isolation from the other provisions of the Act", but rather should be considered "in the context of the

Act, as a whole".<sup>9</sup> Section 11(e) of the Act, under which voluntary plans for the reorganization of registered holding companies and their subsidiaries are submitted to and approved or rejected by the Commission and are then submitted to and approved and enforced or rejected by the district courts, embodies in a single paragraph and in general terms the same broad scope of reorganization powers which Chapter X of the Bankruptcy Act takes many pages to express. To determine the specific powers of the Commission under Section 11, it is therefore appropriate, and indeed necessary, to refer to the more detailed description of the Commission's regulatory powers contained in other sections of the Holding Company Act.

The provisions of the Act governing the Commission's regulatory jurisdiction make plain the broad jurisdiction of the Commission to pass upon fees payable by holding companies in carrying on many of their business affairs. Thus, no registered holding company, may issue and sell its securities except "in accordance with a declaration effective under section 7 and with the order under such section permitting such declaration to become effective." Holding Company Act, Section 6(a), Appendix, *infra*, p. 39. One of the grounds for the Commission's refusing to permit such a declaration to become effective is a finding, pursuant to Section 7(d)(4) of the Act (Appendix, *infra*, p. 39), that:

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<sup>9</sup> *S.E.C. v. Central-Illinois Securities Corp.*, 338 U.S. 96, 122.

the fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly, in connection with the issue, sale, or distribution of the security are not reasonable.

Nor may any registered holding company, however solvent, acquire, directly or indirectly, any securities or utility assets unless "the acquisition has been approved by the Commission under section 10" (Section 9(a), Appendix, *infra*, p. 40). One of the grounds for refusing approval of such an acquisition is a Commission finding, pursuant to Section 10(b)(2) of the Act (Appendix, *infra*, p. 40), that:

the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable \* \* \*.

Pursuant to Section 12(d) of the Act (Appendix, *infra*, p. 44), no registered holding company may sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding "fees and commissions," among other things, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

Finally, pursuant to Section 12(e) of the Act (Appendix, *infra*, p. 44), no registered holding company, however solvent, may negotiate, enter

into, or take any step in the performance of any transaction not otherwise unlawful under the Act, with any company in the same holding company system, in contravention of such rules and regulations or orders regarding "costs," among other things, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

In the present case, Bond and Share has made application under Sections 10, 11, and 12 of the Act with respect to the acquisition of securities from Electric, the disposition of its holdings in Electric, and the settlement of intrasystem claims (R. 334). The application states that the proposed transactions will not be carried out except with the approval of the Commission, and makes the statement that fees will be reasonable, along with other assertions concerning issues which must be decided by the Commission, as a reason for believing that the proposed transactions "will be in compliance with" Sections 10, 11, and 12 of the Act (R. 334-335). As noted above, Sections 10 and 12 give the Commission express jurisdiction over such transactions, and over the fees incurred in connection therewith. Therefore, regardless of whether jurisdiction exists by reason of Bond and Share's relationship to the reorganization plan or its own filing under Section 11,<sup>10</sup> the Drexel fees were

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<sup>10</sup> Section 11 applies to the transactions proposed by Bond and Share because they "are steps in compliance by Bond and Share and Electric with Section 11 of the Act" (R. 334).

certainly to some extent subject to the Commission's jurisdiction under the other sections.

But it is not necessary to decide whether Sections 10 and 12 alone supply an adequate basis for the Commission's exercise of jurisdiction with respect to the Drexel fee. Rather, with Section 7, they support the general authority of the Commission to pass upon fees and expenses payable by solvent registered holding companies in connection with ordinary financial transactions, and refute the reasons advanced by the court below for holding that Section 11 of the Act, requiring the Commission to pass upon reorganization fees and expenses incurred in the simplification and integration of holding company systems, excludes jurisdiction over fees payable by a registered holding company for services rendered to protect its interests in the reorganization of a subsidiary. They supply some of the statutory context and indications of Congressional purpose from which the more general provisions of Section 11 "derive much meaningful content." *American Power & Light Co. v. S. E. C.*, 329 U.S. 90, 104; and see *S. E. C. v. Central-Illinois Securities Corp.*, 338 U.S. 96, 122; *Halsted v. S. E. C.*, 182 F. 2d 660, 662 (C.A.D.C.), certiorari denied, 340 U.S. 834.

The issuance of securities, the acquisition of utility assets, the disposition of securities, and the intrasystem transactions to which Sections 7, 10, and 12 of the Act apply, are all acts generally performed by solvent companies in connection with their own business, and also by parent companies in connection with the reorganization of their sub-

subsidiaries. As the court suggested in *In re Electric Bond & Share Co.*, 80 F. Supp. 795, 798 (S.D. N.Y.), since Congress granted the Commission authority over fees incurred in connection with those financial matters, it is not plausible to assume that less extensive power was granted in a Section 11 reorganization.

**II. The Commission's jurisdiction over the fees to be paid by Bond and Share is specifically supported by the provisions, and the legislative history, of Section 11 (e) and (f) of the Holding Company Act.**

1. In addition to giving the Commission jurisdiction to supervise fees incurred by registered holding companies in connection with their ordinary transactions, the Congress was particularly concerned lest the reorganizations required by Section 11(b) of the Act be themselves a source of excessive fees. Through the provisions of Section 11(d), (e), and (f) of the Act, Congress granted the Commission full jurisdiction over all fees incurred by regulated companies in connection with Section 11 reorganizations.

The report of the National Power Policy Committee on Public Utility Holding Companies,<sup>11</sup> which summarized the reports referred to in Section 1(b) of the Act and which served as a blueprint for the legislation, refers to the desirability of protecting "the average investor from the exploitation threatening him almost as a matter of course under our usual methods and mores of cor-

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<sup>11</sup> Appended to Senate Report No. 621, 74th Cong., 1st Sess., pp. 55-60.



porate reorganization \* \* \* .”<sup>12</sup> The report has been treated by this Court as a significant indication of the objectives of the Holding Company Act. See *Otis & Co. v. S. E. C.*, 323 U.S. 624, 636; *North American Co. v. S. E. C.*, 327 U.S. 686, 703, 704; *American Power & Light Co. v. S. E. C.*, 329 U.S. 90, 101.

Senator Wheeler, sponsor of the legislation in the Senate, emphasized the protective provisions of the proposed legislation:<sup>13</sup>

That brings me to the last point—the protection of the holding-company investor by the Securities and Exchange Commission. I do not blame the average investor for shuddering at the very word “reorganization.” In the usual process of reorganization and regrouping of properties the investor might be given the same milking by reorganizing bankers and their lawyers that he has had to take in railroads, real estate, and every other kind of corporate reorganization. To meet that very danger the bill puts the entire process of reorganization, including fees and so-called “reorganization plans”, under the control of the Securities and Exchange Commission.

In reporting the proposed legislation to the Senate, the Senate Committee on Interstate Commerce stated with respect to Section 11:<sup>14</sup>

<sup>12</sup> *Id.* at p. 58.

<sup>13</sup> 79 Cong. Record 4607, March 28, 1935.

<sup>14</sup> Senate Report No. 621, 74th Cong., 1st Sess., at p. 33. See also the same report at pp. 16-17, 55-60.

Subsections (d), (e), and (f) outline the procedure whereby the reorganization plans must be approved by the Commission and carried out under the supervision of the Federal courts. \* \* \* Under these subsections, Commission approval of reorganization plans and supervision of the conditions under which such plans are prepared will make it impossible for a group of favored insiders to continue their domination over inarticulate and helpless minorities, or even as is often the case, majorities. *Fees, expenses, and remunerations paid in connection with any such reorganization*, whether under Section 77B of the Bankruptcy Act or otherwise, are made subject to the approval of the Commission. [Emphasis added.] <sup>15</sup>

In *In re Public Service Corp. of New Jersey*, 211 F. 2d 231, 232-233 (C.A. 3), certiorari denied *sub nom. United Corp. v. S. E. C.*, 348 U.S. 820, the court said:

Reorganization fees might be the determining factor in considering whether a plan is fair and equitable to those concerned. The intent of Congress to give the Commission a reasonable supervision over that type of fee is clear from the legislative history of the Act.

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<sup>15</sup> It is no answer to these expressions of purpose that they refer specifically to a draft of the Act that was revised before enactment. There is no indication whatever in the legislative history of Section 11 of any intent to reduce the jurisdiction of the Commission over fees. See footnote 21 *infra*, pp. 31-32.

2. Section 11(e) of the Act gives the Commission the power, and imposes upon it the duty, to determine whether a plan of reorganization submitted to it is "fair and equitable to the persons affected by such plan." According to the analysis of the Court in *In re Electric Bond & Share Co.*, *supra* (80 F. Supp. at 798), jurisdiction over fees "is an inseparable part of the determination of whether a plan is fair and equitable \* \* \* . If the SEC has no power over fees, it may well approve a plan which in the end is not in its judgment fair and equitable, because of the distribution of fees authorized by other jurisdictions." This view "is supported by the very broad powers which are bestowed upon it [the Commission] in the opening words of section 11(e)," providing that plans shall be submitted in "accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers." See also *In re Public Service Corp. of New Jersey*, *supra*; *Standard Gas & Electric Co. v. S. E. C.*, 212 F. 2d 407, 410 (C.A. 8), certiorari denied, 348 U.S. 831.

The particular issue here is the application of this section to a fee where the "persons affected" are the investors in the parent company and where the funds to pay the fee are not withdrawn from the assets of the company under reorganization, but are contributed directly by the parent company. Decisions of this Court in comparable situations are helpful in the application of the Act in

these particular circumstances. In *American Power & Light Co. v. S. E. C.*, 325 U.S. 385, it was held that under Section 24(a) of the Act, which provides generally for review of Commission orders, a stockholder of Bond and Share was a "person aggrieved" by a Commission order approving the refinancing of a debt owed by a subsidiary of Bond and Share to Bond and Share, and that the stockholder thus had the right to seek judicial review of the Commission's order. In this case, the dissolution of Electric was of more direct concern to the stockholders of Bond and Share. The plan itself provided for the acquisition by Bond and Share of new securities with a market value of approximately \$65,000,000 at the time the plan was consummated.<sup>16</sup> It also provided for a large cash payment by Bond and Share to Electric in settlement of intrasystem claims. The interests of the Bond and Share stockholders were among the most important of those involved in the proceedings.

Rather than being an "irrelevant factor" in determining the fairness of the plan (R. 308), the fees paid by Bond and Share in connection with the Electric reorganization necessarily diminish *pro tanto* the participation of the Bond and Share stockholders and so affect the fairness and equity of the allocation to them. Thus, Bond and Share's stockholders are "affected" by the fees to be paid

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<sup>16</sup> Pursuant to the plan, Bond and Share received 803,329 shares of the common stock of Middle South Utilities, Inc. and 2,870,653 shares of the common stock of United Gas Corporation.

by Bond and Share, just as they and the direct stockholders of Electric are "affected" by the fees to be paid by Electric itself.

In addition, as shown in the Statement, *supra*, the dissolution of Electric was an integral part of the program of Bond and Share itself for compliance with Section 11(b) of the Act. The Commission's order directing the dissolution of Electric and a sister company was based upon the finding that their existence must be discontinued in order to simplify the structure of the holding company system of Bond and Share, and to eliminate the unfair and inequitable distribution of voting power among the security holders of the system. *Electric Bond and Share Company*, 11 S.E.C. 1146, 1214-1215 (1942). In affirming the dissolution order, the First Circuit recognized its relation to Bond and Share's compliance when it stated: "The present litigation is but part of a larger proceeding instituted by the Commission to deal in accordance with the statutory mandates with the whole Electric Bond & Share system and all of its component parts." *American Power & Light Co. v. S. E. C.*, 141 F. 2d 606, 620, affirmed, 329 U.S. 90, 116-117. Bond and Share's application for approval of its own transactions incident to the dissolution of Electric states (R. 334): "The proposed transactions are steps in compliance by Bond and Share and Electric with Section 11 of the Act \* \* \*."

The significance of the reorganization of its subsidiaries to Bond and Share and its stockholders is

indicated by the fact that, from June 1946 through November 1954, the Commission has passed upon requests by Bond and Share to pay approximately \$700,000 to the attorneys and experts whom Bond and Share had retained in connection with reorganizations of its subsidiaries and has approved the payment of approximately \$600,000 out of its own assets.<sup>17</sup> During the same period, Bond and Share's requests for approval of like payments to attorneys and experts retained in connection with the phases of its own reorganization which did not directly involve the reorganization of its subsidiaries amounted to approximately \$738,000, and the Commission has approved the payment of approximately \$686,000 thereof.<sup>18</sup>

Obviously the equity of the Bond and Share security holders is in actuality reduced whether the payment is made by Bond and Share or by its subsidiary. Therefore, the net assets which those

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<sup>17</sup> *United Gas Corporation*, Holding Company Act Releases No. 5677 (March 21, 1945) and No. 6734 (June 21, 1946); *Pennsylvania Power & Light Company*, Holding Company Act Releases No. 6949 (October 17, 1946) and No. 7599 (July 24, 1947), original request shown in transcript pp. 538-539, File No. 54-128-1-5; *National Power & Light Company*, Holding Company Act Release No. 7172 (January 31, 1947); *American Power & Light Company*, Holding Company Act Release No. 11,517 (October 1, 1952) and No. 11,904 (May 11, 1953); *Portland Gas & Coke Company*, Holding Company Act Release No. 11,560 (October 31, 1952); *American & Foreign Power Company*, Holding Company Act Release No. 11,976 (June 5, 1953).

<sup>18</sup> *Electric Bond and Share Company*, Holding Company Act Releases No. 8084 (March 26, 1948), No. 11,903 (May 11, 1953), No. 11,978 (June 5, 1953), No. 12,567 (June 29, 1954) and No. 12,698 (November 5, 1954).

security holders will realize from the reorganization of the subsidiary <sup>and</sup> ~~is~~ quite as truly reduced by fees paid by the parent as by the subsidiary. As far as Bond and Share stockholders are concerned, a reorganization plan for Electric is not fair and equitable if their interest is reduced by unreasonable fees connected with the reorganization even if paid by Bond and Share itself.

3. The power over reorganization fees which is impliedly granted by the "fair and equitable" standard of Section 11(e) is expressly granted by the last sentence of Section 11(f), which gives the Commission authority to require approval of fees, expenses, and remuneration paid in connection with any reorganization, dissolution, liquidation, bankruptcy or receivership of a registered holding company or a subsidiary thereof.

The opinion of the court below suggests that the Commission's jurisdiction over fees conferred by Section 11(f) should be construed as inapplicable to any reorganization proceeding under Section 11(e), unless a trustee or receiver has been appointed therein.<sup>19</sup> That interpretation would contravene *Halsted v. S.E.C.*, 182 F. 2d 660 (C.A. D.C.), certiorari denied, 340 U.S. 834, where Section 11(f) was held to be applicable in a Section 11(e) reorganization. See also *S.E.C. v. Cogan*, 201 F. 2d 78, 81 (C.A. 9), and *American Power &*

<sup>19</sup> Section 11(e) empowers the enforcement court to appoint a trustee, but that power has never been exercised in any of the proceedings (over 100 in number) for enforcement of Section 11(e) plans.



*Light Co. v. S.E.C.*, 329 U. S. 90, 114, where this Court stated:

Section 11(f) refers to fees, expenses and remuneration paid in connection with any reorganization, dissolution, liquidation, bankruptcy or receivership of a registered holding company or a subsidiary thereof.

Section 11(f) in its entirety is set forth in the Appendix, p. 45, *infra*. The legislative history and the pattern of regulation under the statute show that the words "in any such proceeding" in the last sentence of Section 11(f) were intended to relate back to the types of proceeding specified in the clause immediately preceding those words, or to all proceedings covered by the first two sentences of Section 11(f) in which a trustee or receiver might be appointed,<sup>20</sup> but were not to be limited to a proceeding in which a trustee or receiver has actually been appointed.<sup>21</sup> An interpretation of

<sup>20</sup> Subsections (d) and (e) of Section 11 of the Act, like Section 77B of the Bankruptcy Act in effect when the Holding Company Act was passed, authorize the enforcement court to appoint a trustee, but do not require such an appointment.

<sup>21</sup> Section 11(f) as originally drafted (§ 11(d) of S. 1725, and § 10(d) of H. R. 5423, introduced February 6, 1935), and as reported to the Senate (§ 11(f) of S. 2796, reported May 14, 1935), started with a provision authorizing the Commission to institute proceedings for the reorganization of regulated companies pursuant to Section 77B of the Bankruptcy Act. The sentence conferring fee jurisdiction then used the phrase "whether under said Section 77B or otherwise" instead of the words "in any such proceeding". Later (June 7, 1935, 79 Cong. Rec. 8844-5) the Senate sponsors of the Bill proposed and the Senate adopted an amendment to the first

Section 11(f) that would permit Commission supervision over fees only in proceedings where a court has appointed a receiver or trustee and is itself in a position to supervise fees and expenses, but would deny the Commission any supervision over such matters where the entire reorganization is conducted before the Commission, would make no statutory sense and would thwart the intent of Congress.

Basically, however, the heart of the opinion below appears to be that the fees are not paid "in connection with" the reorganization as required by Section 11(f) because they are paid not out of the assets of the reorganized company, but by one of its security holders. On that issue the decision of this Court in *Leiman v. Guttman*, 336 U. S. 1, is very persuasive. That case decided the question whether, under Chapter X, the bankruptcy court

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two sentences of Section 11(f), eliminating all reference to Section 77B. There was no proposal before the Committee or on the floor of the Senate to restrict the Commission's jurisdiction over fees to be paid in connection with "any reorganization, dissolution, liquidation, bankruptcy, or receivership" of a regulated company. No amendment of Section 11(f) was adopted, except as proposed by the sponsors of the Act. Without any reported discussion in committee or on the floor, the words "whether under said Section 77B or otherwise" were dropped from the fee sentence of Section 11(f), and the words "in any such proceedings" substituted (§ 11(f) of S. 2796, ordered printed June 7, 1935, showing amendments agreed to), for the sole purpose of reflecting the elimination of all prior references to Section 77B. Still later (§ 11(f) of S. 2796 as passed by the Senate June 11, 1935), and again without any discussion or indication of intent to limit fee jurisdiction, the word "proceeding" was substituted for the word "proceedings". (Appendix, *infra*, pp. 45-51)

has exclusive jurisdiction of counsel fees whether paid out of the estate or paid by stockholders directly. This Court upheld the exclusive jurisdiction of the bankruptcy court, stating (336 U. S. 1, 8):

\* \* \* § 221 (4) is written in pervasive terms—it applies to “all payments” for services “in connection with” the proceeding or “in connection with” the plan and “incident to” the reorganization, whoever pays them. A statute establishing such broad supervision over committees cannot be presumed to be niggardly in its grant of authority when it deals with the matter which of all the others has the most direct impact on those whom it aims to protect.

\* \* \* The statute was designed to police the return which all stockholders obtain from reorganization plans. The net return cannot be kept under supervision if private arrangements expressed in escrow agreements are to control. For the impact of excessive fee claims is the same whether they are charged directly against the estate or against the claim which represents a proportionate interest in the estate.

*Halsted v. S.E.C.*, 182 F. 2d 660 (C.A. D.C.), certiorari denied, 340 U. S. 834, construed Section 11(f) as conferring upon the Commission a similarly broad jurisdiction over fees in Section 11(e) proceedings. That case arose from an application

of a committee for stockholders of a registered holding company, filed pursuant to Section 12(e) of the Act, for permission to solicit stockholders for contributions to finance committee operations in a Section 11(e) reorganization. The Commission found its authority to refuse such permission in the fee provisions of Section 11(f), and the court upheld that interpretation. The court found (at p. 666) that the Commission's authority over fees "would be of little worth or significance if a court were to compel the Commission at the present stage of the case to permit the type of activity here contemplated." It also stated (182 F. 2d at 665):

What is really in issue in this case is not representation; it is fees. \* \* \* The express provisions of Section 11(f), quoted above, give the Commission direct control over the fees to be allowed in enumerated proceedings under the Act. We cannot ignore this provision, or invite its evasion. Under a closely comparable provision of the Chandler Act, the Supreme Court has recently declared that investors are entitled to full protection, even as against their own contractual arrangements. [Citing and quoting from *Leiman v. Guttman*, *supra*]

The court below attempted to distinguish the *Halsted* case on the ground that there the committee announced that it intended to seek reimbursement from the assets of the company undergoing reorganization. But, here too, Bond and Share

sought reimbursement from the estate of Electric, and did not recede from that position until after the Commission had passed upon the amount of the fee, had denied the application for reimbursement, and had applied to the district court for enforcement of its decision.

4. The decision below, if upheld, would leave a peculiar gap in the fee jurisdiction of the Commission under the Holding Company Act. Clearly, the Commission has jurisdiction to pass upon the fees payable by a registered holding company in connection with transactions for the issuance and sale of securities, the acquisition of assets, and intrasystem transactions, wholly unconnected with a reorganization. Equally clearly, the Commission has jurisdiction to pass upon the fees payable by such a company in connection with its own reorganization, and in connection with the reorganization of a subsidiary if a trustee or receiver is appointed. The fact that the sales and acquisitions by Bond and Share in this case were connected with the reorganization of Electric, and that this reorganization was effectuated through Commission and court proceedings in which a trustee could have been but was not appointed, offers no proper basis for denying the Commission's jurisdiction over the Bond and Share fees.

5. Throughout its administration of Section 11 of the Act, the Commission has passed upon the fees to be paid to representatives of parent holding companies for services rendered in connection with

the reorganization of their subsidiaries.<sup>22</sup> Until the present case, no challenge has been made to its

<sup>22</sup> See *Public Service Corp. of N. J.*, Holding Company Act Release No. 12,000 (June 16, 1953), affirmed in part, reversed in part, on other issues, *In re Public Service Corp. of N. J.*, 211 F. 2d 231 (C.A. 3), certiorari denied 348 U.S. 820; *Eastern Gas & Fuel Associates*, H.C.A. Release No. 11,954 (May 29, 1953), enforced in part, reversed in part, on other issues, 120 F. Supp. 460 (D. Mass.), appeal pending; *Niagara Hudson Power Corp.*, H.C.A. Release No. 11,667 (January 14, 1953), approved and enforced, 114 F. Supp. 683 (N.D. N.Y.), appeal on other issue pending; *Bauer, Trustee of Pittsburgh Rys. Co. and Philadelphia Co.*, H.C.A. Release No. 11,592 (November 18, 1952); *Interstate Power Co.*, H.C.A. Release No. 11,359 (June 26, 1952); *Northern States Power Co.* (Del.), H.C.A. Release No. 11,145 (April 8, 1952), approved in part and disapproved in part, on other issues, 119 F. Supp. 331 (D. Minn.), affirmed *sub nom. Standard Gas & Electric Co. v. S.E.C.*, 212 F. 2d 407 (C.A. 8), certiorari denied, 348 U.S. 831; *The North American Co.*, H.C.A. Releases No. 10,583 (May 28, 1951) and 10,304 (December 21, 1950); *National Power & Light Co.*, H.C.A. Release No. 10,321 (December 23, 1950); *The North American Co.*, H.C.A. Release No. 10,256 (November 30, 1950); *Pennsylvania Edison Co.*, H.C.A. Release No. 9988 (July 21, 1950); *Central States Utilities Corp.*, H.C.A. Release No. 9411 (October 10, 1949); *Market Street Ry. Co.*, H.C.A. Release No. 9376 (September 30, 1949), approved in part and disapproved in part, on other issues, unreported, N.D. Calif., Civil Action No. 29,723, July 11, 1950, affirmed *sub nom. S.E.C. v. Cogan*, 201 F. 2d 78 (C.A. 9); *Louisville Gas & Electric Co.* (Del.), H.C.A. Release No. 9346 (September 16, 1949); *The Middle West Corp.*, H.C.A. Release No. 8547 (October 1, 1948); *Central Public Utility Corp.*, H.C.A. Release No. 8468 (August 25, 1948); *Scranton-Spring Brook Water Service Co.*, H.C.A. Release No. 8358 (July 15, 1948); *The United Gas Improvement Co.*, H.C.A. Release No. 8321 (June 29, 1948); *Buffalo, Niagara & Eastern Power Corp.*, H.C.A. Release No. 8024 (March 9, 1948); *Central States Power & Light Corp.*, H.C.A. Release No. 7916 (December 5, 1947); *Midland Utilities Co.*, H.C.A. Release No. 7735 (September 23, 1947); *The Laclede Gas Light Co.*, H.C.A. Releases No. 6954 (October 21, 1946) and No. 6306

jurisdiction over these allowances.<sup>23</sup> Such a consistent interpretation of the statute by the agency designated by Congress to administer it is entitled to substantial weight. *Norwegian Nitrogen Products Co. v. United States*, 288 U. S. 294, 315; *United States v. American Trucking Ass'n, Inc.*, 310 U. S. 534, 549; *North American Utility Securities Corp. v. Posen*, 176 F. 2d 194, 197 (C.A. 2).

#### CONCLUSION

The regulatory pattern and legislative history of the Holding Company Act make it clear that the Commission had full jurisdiction to pass upon the reasonableness of the Drexel fee, because of its connection with the dissolution of Electric and the reorganization of the Bond and Share holding company system, and with the specific transactions by Bond and Share which required Commission approval. The court below erred in its disregard of the direct participation by Bond and Share in the transactions required for Electric's dissolution, and

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(October 17, 1945); *The United Corp.*, H.C.A. Release No. 6509 (March 22, 1946); *Columbia Gas & Electric Corp.*, 17 S.E.C. 549 (1944), approved and enforced, unreported, D. Del., Civil Action No. 288, May 18, 1945; *Cities Service Co.*, 15 S.E.C. 536 (1944); *Puget Sound Power & Light Co.*, H.C.A. Release No. 4835 (January 13, 1944); and *Derby Gas & Electric Corp.*, H.C.A. Release No. 3236 (December 30, 1941).

<sup>23</sup> Unless Drexel itself had originally believed that the Commission had jurisdiction over the fee payable to it by Bond and Share it would not have agreed with Bond and Share that the amount of the fee should be such as might be approved by the Commission, nor would it have applied to the Commission for approval of the payment by Bond and Share.



in its piecemeal interpretation of Section 11(c) and (f) without regard to their statutory context.

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed.

SIMON E. SOBELOFF,  
*Solicitor General.*

WILLIAM H. TIMBERS,  
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MYRON S. ISAACS,  
*Associate General Counsel,*

ELIZABETH B. A. ROGERS,  
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*Securities and Exchange Commission.*

DECEMBER, 1954.

## APPENDIX

The following provisions of the Public Utility Holding Company Act of 1935 (49 Stat. 803, 15 U.S.C. 79a *et seq.*) are pertinent:

SEC. 6(a) Except in accordance with a declaration effective under section 7 and with the order under such section permitting such declaration to become effective, it shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly (1) to issue or sell any security of such company; or (2) to exercise any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security of such company.

\* \* \* \* \*

SEC. 7 \* \* \*

(d) If the requirements of subsections (c) and (g) are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that—

\* \* \* \* \*

(4) the fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly, in connection with the issue, sale,

or distribution of the security are not reasonable;

\* \* \* \* \*

SEC. 9(a) Unless the acquisition has been approved by the Commission under section 10, it shall be unlawful—

(1) for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to acquire, directly or indirectly, any securities or utility assets or any other interest in any business.

\* \* \* \* \*

SEC. 10 \* \* \*

(b) If the requirements of subsection (f) are satisfied, the Commission shall approve the acquisition unless the Commission finds that—

\* \* \* \* \*

(2) in case of the acquisition of securities or utility assets, the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired

or the utility assets underlying the securities to be acquired; \* \* \*

\* \* \* \* \*

# SEC. 11 \* \* \*

(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice

and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

(f) In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court may constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed, and in any such proceeding the court shall not appoint any person other than the Commission as trustee or receiver without notifying the Commission and giving it an opportunity to be heard before making any such appointment. In no proceeding

under this section or otherwise shall the Commission be appointed as trustee or receiver without its express consent. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission.

## SEC. 12 \* \* \*

(d) It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of the title or the rules, regulations, or orders thereunder.

\* \* \* \* \*

(f) It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this title, with any company in the same holding-company system or with any affiliate of a company in such holding-company system in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of com-



petitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules and regulations thereunder.

#### LEGISLATIVE DRAFTS OF SECTION 11 (F) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

(a) Section 11 (d) of S. 1725 and Section 10 (d) of H.R. 5423, identical bills except for the short title and the number of sections, introduced in the Senate and House, respectively, on February 6, 1935:

“If, in the judgment of the Commission, any registered holding company or any subsidiary company thereof is insolvent or unable to pay its debts as they mature, the Commission shall have power to institute proceedings for the reorganization of such company under section 77B of the Act of July 1, 1898, entitled ‘An Act to establish a uniform system of bankruptcy throughout the United States’, as amended. In any such proceedings or in any other proceedings in a court of the United States, whether under said section 77B or otherwise by whomsoever instituted, for the reorganization or liquidation of any registered holding company or subsidiary company thereof or in which a receiver or trustee of

any such company or any assets thereof is appointed, the court, at the request of the Commission, shall have jurisdiction, and it shall be the duty of the court, to constitute and appoint the Commission as sole trustee or receiver, whether or not a trustee or receiver shall theretofore have been appointed. In any such proceedings a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be prepared in the first instance by the Commission or, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. All fees, expenses, and remuneration paid in connection with any reorganization or liquidation of a registered holding company or subsidiary company thereof, whether under said section 77B or otherwise, shall be subject to the approval of the Commission. The Commission shall be entitled to such reasonable compensation for its services as trustee or receiver in any proceedings as the court may allow."

(b) Section 11 (f) of S. 2796, as reported out with Senate Report No. 621, May 7 (calendar day, May 9), 1935:

"If, in the judgment of the Commission, any registered holding company or any subsidiary company thereof is insolvent or unable to pay its debts as they mature, the Commission shall have power to institute proceedings for the reorganization of such company under section 77B of the Act of July 1, 1898, entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' as amended. In any proceeding pursuant to this section or in any other proceeding in a court of the United States, whether under said section 77B or otherwise, by whomsoever instituted, for the reorganization, dissolution, liquidation, bankruptcy, or receivership of any registered holding company or subsidiary company thereof or in which a receiver or trustee of any such company or any assets thereof is appointed, the court shall have jurisdiction to appoint a trustee or receiver, and, at the request of the Commission, shall have power, and it shall be the duty of the court to constitute and appoint the Commission as sole trustee or receiver, whether or not a trustee or receiver shall theretofore have been appointed. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become ef-

fective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, whether under said section 77B or otherwise, shall be subject to approval by the Commission. The Commission shall be entitled to such reasonable compensation for its services as trustee or receiver in any proceeding as the court may allow."

(c) Section 11 (f) of S. 2796, Senate Report 621, May 13 (calendar day, June 7), 1935:

"(f) 4f, in the judgment of the Commission any registered holding company or any subsidiary

company thereof is insolvent or unable to pay its debts as they mature, the Commission shall have power to institute proceedings for the reorganization of such company under section 77B of the Act of July 1, 1898, entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', as amended. In any proceeding pursuant to this section or in any other proceeding in a court of the United States, whether under said section 77B or otherwise, by whomsoever instituted, for the reorganization, dissolution, liquidation, bankruptcy, or receivership of any registered holding company or subsidiary company thereof or in which a receiver or trustee of any such company or any assets thereof is appointed, the court shall have jurisdiction to appoint a trustee or receiver, and, at the request of the Commission, shall have power, and it shall be the duty of the court to constitute and appoint the Commission as sole trustee or receiver,

*"(f) In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court shall have power, and, at the request of the Commission, it shall be the duty of the court, to constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been*

appointed. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, ~~whether under said section 77B or otherwise in any such proceedings,~~<sup>1</sup> shall be subject to approval by the Commission. The Commission shall be entitled to such reasonable compensation for its

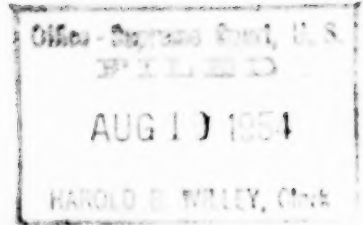
<sup>1</sup> In the version of the Bill as passed by the Senate on June 11, 1935, the word "proceeding" appears instead of "proceedings."

services as trustee or receiver in any proceeding as the court may allow." <sup>2</sup>

<sup>2</sup> On June 10, 1935, an amendment, which was proposed by Senator McKellar, to strike the last sentence of Section 11 (f) of S. 2796 was agreed to without an objection on the Senate floor.



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SUPREME COURT, U.S.



IN THE  
**Supreme Court of the United States**

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October Term, 1954.

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**No. 153.**

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SECURITIES AND EXCHANGE COMMISSION,  
*Petitioner,*

*v.*

DREXEL & CO.

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On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Second Circuit.

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**BRIEF FOR DREXEL & CO. IN OPPOSITION TO  
PETITION.**

---

HENRY S. DRINKER  
THOMAS REATH  
JOHN MULFORD

117 S. 17th Street,  
Philadelphia 3, Pa.

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IN THE  
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No. 153

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SECURITIES AND EXCHANGE COMMISSION,  
*Petitioner*

*v.*

DREXEL & CO.

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

---

**BRIEF FOR DREXEL & CO. IN OPPOSITION TO  
PETITION.**

---

**QUESTIONS PRESENTED FOR REVIEW.**

1. Does the jurisdiction of the Securities and Exchange Commission over fees in connection with reorganization or liquidation proceedings under Section 11 of the Public Utility Holding Company Act of 1935 extend to fees for professional services rendered to a holding company (not itself being reorganized in the proceedings) in connection with the protection of its interest in one of its subsidiaries which was being reorganized in the proceedings, where the fee is to be paid by the parent and not by or out of the assets of the subsidiary?

2. Assuming that the Securities and Exchange Commission had jurisdiction, did it, in determining the amount of the fee to be allowed to respondent, give proper weight to the amount agreed upon between respondent and its client?

3. Again assuming that the Commission had jurisdiction, was the order, by which it reduced to \$50,000 the fee of \$100,000 agreed upon between the respondent and its client, supported by substantial evidence? Was not such action by the Commission arbitrary, capricious, an abuse of discretion, and not in accordance with law?

### **COUNTER-STATEMENT OF THE CASE.**

This case arises out of a proceeding before the Securities and Exchange Commission (the Commission) for the liquidation of Electric Power and Light Corporation (Electric) under Section 11(e) of the Public Utility Holding Company Act of 1935, 49 Stat. 803, USC Title 15 §§ 79 et seq. (the Act), as required by the Commission by order entered August 22, 1942 (11 S. E. C. 1146).

Electric was a subsidiary of Electric Bond and Share Company (Bond & Share). Both were holding companies as defined in the Act.

Between November 6, 1945 and March 25, 1948, a number of plans for the liquidation of Electric were filed with the Commission in this proceeding, and hearings held thereon. All these plans, however, for one reason or another were abandoned or withdrawn, and none ever reached the point of approval by the Commission.

On March 25, 1948 Electric filed a plan (the Plan) for compliance with the Act, which was in due course approved by the Commission on March 7, 1949, enforced by the District Court on April 22, 1949, and finally consummated. Bond & Share was not a party to this Plan, nor did it participate in the filing thereof. The Plan dealt exclusively



with Electric and its assets (R. 4, 34). Except as a debtor to and security holder of Electric, Bond & Share was in no way affected by the Plan. It was not the corporation being reorganized or dissolved in the proceeding.

In May of 1945, Bond & Share, believing that it needed expert financial advice to protect its very large investment in the securities of Electric<sup>1</sup>, had retained Drexel & Co. (Drexel), a firm with wide experience in such matters, to advise it in connection with the dissolution proceedings then pending under the Act with respect to Electric. In this capacity Drexel rendered substantial professional services to Bond & Share over a period of more than three years, until after the Plan had been developed and agreed to by most of the parties concerned (R. 262-264).

In the Plan, Electric had, *inter alia*, agreed to pay such fees and expenses of parties to and participants in the proceedings as the Commission should allow (R. 34-35).

Bond & Share agreed with Drexel that \$100,000 was fair and reasonable compensation for its services in this matter (R. 55; see also R. 198-199). Accordingly, after consummation of the plan, Bond & Share and Drexel in due course filed appropriate applications with the Commission

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1. The capitalization of Electric as of December 31, 1947, on a consolidated basis, excluding dividend arrearages of \$74,019,558 on its preferred stocks, was as follows (see Vol. I, pp. 201, 203 of the unprinted record):

Subsidiaries:

Debt, Preferred Stock, and minority interest in Common Stock	\$273,741,924.
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Electric:

Preferred Stock	76,959,267.
Second Preferred Stock	7,481,400.
Common Stock and Surplus	117,648,724.

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\$475,831,315.

Bond & Share owned 57.23% of the Common Stock and 18.59% of the Second Preferred Stock of Electric, plus warrants to purchase shares of its Common Stock (R. 7).

(R. 54, 59), requesting its approval of a fee of \$100,000 to Drexel for services rendered to Bond & Share, *to be paid out of the estate of Electric*.

On April 21, 1952, the Commission entered its findings, opinion, and order (R. 212, 269), in which it approved the payment of a fee of only \$50,000 to Drexel, but directed that this *be paid by Bond & Share, not by Electric*.

Bond & Share did not contest this order, but determined that it would itself pay the Drexel fee (R. 283), and abandoned its prior position that the fee should be paid by Electric. Consequently, no part of whatever fee Drexel receives will now be paid by or charged to Electric or its estate.

Upon the filing by the Commission with the District Court for the Southern District of New York of an application to enforce the Commission's order with respect to fees (R. 270), Drexel filed exceptions thereto, in so far as it related to its fee (R. 278). The District Court dismissed the exceptions and confirmed the Commission's order (R. 288).

On appeal, the action of the District Court was reversed by a unanimous decision of the United States Court of Appeals for the Second Circuit, with an opinion by Chief Judge Chase (R. 305), on the ground that under the facts of this case the Commission had no jurisdiction over a fee which was to be paid entirely by Bond & Share.

In both the District Court and the Court of Appeals two questions were presented and argued on behalf of Drexel: *first*, that the Commission was without jurisdiction to reduce the Drexel fee; and *second*, that its action in so doing gave insufficient weight to the agreement between Drexel and Bond & Share, was not supported by substantial evidence, and was arbitrary, capricious, an abuse of discretion, and not in accordance with the law.

The Court below, having disposed of the case on jurisdictional grounds, never reached the second question.

**ARGUMENT.****I. Introduction.**

The Commission, in its petition for a writ of certiorari, alleges (p. 7) two reasons for the granting of the writ: (i) that the case presents an important question of Federal law which should be settled by this Court, and (ii) that the decision below conflicts "at least in principle" with a decision of the Court of Appeals for the District of Columbia Circuit.

It is respectfully submitted that each of these suggested reasons is without merit.

Before considering the arguments made by the Commission, however, it is important to understand and to have in mind the basis for the decision of the Court below and the other Court decisions on the general question of the jurisdiction of the Commission over fees for services performed in connection with plans and proceedings under Section 11 of the Act.

The first case to arise was *In Re Electric Bond and Share Company*, 80 F. Supp. 795, decided in 1948 by Judge Knox of the Southern District of New York. In that case the Commission had by order awarded a fee, to be paid out of the estate of National Power & Light Company (which was the company in reorganization under Section 11 of the Act), for services rendered in the proceedings by the claimant as counsel for a stockholder of that company. This order was enforced by Judge Knox, who dismissed objections by the claimant to the jurisdiction of the Commission.

In his opinion, Judge Knox conceded that Section 11(e) of the Act contained no provisions expressly conferring fee jurisdiction on the Commission. But he concluded that, so far as the case before him was concerned, this jurisdiction was clearly to be implied from the express power given

the Commission to pass on the fairness of a plan, saying, at p. 798 of 80 F. Supp.:

"Section 11(e) gives to the SEC the duty to determine in the first instance whether a plan is fair and equitable. It must so find before there can be any court enforcement. I agree with the SEC that jurisdiction over fees is an inseparable part of the determination of whether a plan is fair and equitable."

In every subsequent case involving this question (including the present case, see R. 307-308) the same result has been reached.<sup>2</sup>

The rule of law which is clearly and conclusively established by all these decisions, and the reasoning on which it is based, may be stated thus:

In a proceeding under Section 11 of the Act, the Commission has jurisdiction over all fees which will be paid out of assets dealt with in the plan approved by the Commission. Such jurisdiction, though not expressly granted in Section 11(e), is implied by the Courts on this reasoning: since the Act requires the Commission, before it may approve a plan, to find it to be fair and equitable, and since payment of improper or excessive fees *out of the assets dealt with in a plan* which the Commission had approved as fair might well result in rendering such plan unfair, it is essential, to enable the Commission properly to exercise its power with respect to the fairness of a plan, that it be empowered to control and approve all such fees.

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2. See the following:

*Halstead v. S. E. C.*, 182 F. 2d 660 (C. A. D. C. 1950).

*S. E. C. v. Cogan*, 201 F. 2d 78 (C. A. 9, 1952).

*In Re North American Light and Power Co.*, 202 F. 2d 638 (C. A. 3, 1953); certiorari denied — U. S. —, 74 S. Ct. 30.

*In Re Public Service Corporation of New Jersey*, 211 F. 2d 231 (C. A. 3, 1954).

*Standard Gas & Electric Co. v. Securities and Exchange Commission*, 212 F. 2d 407 (C. A. 8, 1954).

The difference between the cases which established and applied the above rule and the present case is so obvious as to require little comment.

In the present case the Drexel fee will *not* be paid by Electric, which was the company reorganized in the proceedings, or out of its assets, which were dealt with in the Plan. Whatever fee Bond & Share, a wholly solvent corporation which was not the subject of the Section 11 proceedings now in question, may be willing to pay Drexel cannot conceivably affect the fairness of the Plan for Electric. Thus the basis for the Commission's fee jurisdiction as sustained in the other cases is non-existent in the present case.

Such was the decision of the Court below.

We should here point out to the Court that the Commission has made a statement with reference to the compensation to be received by Drexel which, due to a quotation taken out of context, we believe is misleading. On page 5 of its petition it states that "both Drexel and Bond & Share understood that the amount to be paid would be 'such amount as might be approved by the Commission' (R. 193)."

What Mr. Hopkinson (the Drexel senior partner) actually said at page 193 was that in the only conversation he ever had with Bond & Share with respect to fees it was agreed

"that nobody could tell the extent of the work or what it was going to involve and I was warned that it would be subject in all probability to approval by the Securities and Exchange Commission anyway, so there didn't seem to be much point in trying to do anything more.

"We understood they would pay us, of course, for our services, but they could only pay us, they believed, such amount as might be approved by the Commission.

“Q. There was no formal agreement entered into between you and Bond & Share?

“A. No, sir.”

All of this would have been entirely correct if Bond & Share had succeeded in its original effort to have Electric pay the Drexel fee or reimburse Bond & Share for any amount paid by it, for then the Commission would unquestionably have had jurisdiction over the amount. And this was what the parties had contemplated at the time the conversation took place.

In any event, this testimony, we submit, falls far short of showing an agreement that the Drexel fee would be limited to such amount as might be approved by the Commission.

## **II. No Important Question of Federal Law Is Involved in the Decision of the Court Below.**

The Commission has by now substantially completed its duty under Section 11 of the Act to require the various holding company systems throughout the United States to so readjust their capitalizations and holdings as to bring them into conformity with the statutory requirements.

When the few remaining pending cases are completed, the requirements of Section 11 will have been fully complied with by all holding companies, and none of the various problems in connection with the liquidation, recapitalization, or reorganization of holding companies, or the services required in connection therewith, or the compensation to be paid therefor, will again arise.

In its petition for certiorari, in support of its assertion that the decision of the Court below involves an important question of Federal law, the Commission says on page 8:



"There are currently pending before the Commission at least four proceedings, involving fee applications of several millions of dollars, in which this issue is involved."

And on page 23, it amplifies this statement as follows:

"There are presently pending before the Commission in various stages at least four reorganizations, where fee applications have been filed and the question at issue is involved. In the case of the Standard Power & Light Corporation system, the claims which involve this issue, in whole or in part, run over \$3,500,000. In the United Corporation, Northern New England, and Pennsylvania Gas and Electric systems comparable issues are involved."

These statements, however, are not correct. An examination of these cases, as explained below, will show that in each of these four reorganizations the Commission, under the well established principles (*supra*, p. 6), clearly has complete jurisdiction over all fees there claimed. The issue in the present case, therefore, can not be involved in any of those cases and the decision in the present case could never have any application to any of them.

*Standard Power and Light Corporation* case. Here both *Standard Power and Light Corporation* (the top holding company) and *Standard Gas and Electric Company* (its subsidiary) were or are being liquidated or reorganized in proceedings before the Commission under Section 11 in accordance with plans approved by the Commission.

Four applications for fees are now pending (see Commission order of May 14, 1954, Holding Company Act Release No. 12496) for services rendered in connection with the plans and proceedings. Three of these are claims (aggregating \$57,500 in amount) against Standard Power and Light Corporation by counsel for certain of its stockholders. The fourth is a claim for a fee of \$3,500,000 filed against



Standard Gas and Electric Company by counsel<sup>3</sup> for stockholders of that corporation.

To the extent that these claims are allowed, they will be paid out of the estates of the corporations which were before the Commission in the proceedings and were dealt with in the plans approved by the Commission. Allowances of fees out of such estates, as the court below stated, could obviously affect the fairness of the plans to persons affected by them, i.e., persons who were to receive securities of the company which, or the predecessor of which, was required to pay the fees in question.

*Northern New England Company.* In this case two companion Section 11(e) plans were filed by *Northern New England Company* (the top holding company), and by *New England Public Service Company* (its subsidiary) in the same proceedings then pending before the Commission. (Commission file No. 59-15). Each plan provided for the liquidation of the Company concerned and the distribution of its assets to its stockholders.

On February 13, 1953 (see HCAR<sup>4</sup> No. 11711) the Commission entered a single order in which it approved both plans as fair and equitable. They have now been consummated.

There are now pending before the Commission a number of applications for fees in this matter, filed on behalf of counsel and other representatives of each of the two companies and various groups of their respective security holders. Any fees allowed will be paid out of assets now or

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3. We are advised that these counsel advance the contention that they have created or preserved a large fund in the course of proceedings before the District Court, and that on the basis of this special circumstance the District Court has inherent equity power to award them compensation under the principle enunciated by this Court in *Sprague v. Ticonic National Bank*, 307 U. S. 161 (1939). Obviously, the instant case does not in any way involve any such issue.

4. The abbreviation HCAR, when used in this brief, refers to Holding Company Act Releases issued by the Commission.

formerly belonging to either or both of the two companies, which were dealt with in the plans.

*Pennsylvania Gas & Electric Corporation* (Commission file Nos. 54-165 and 54-177). Here the required reorganization of both the holding company and its subsidiaries under Section 11 of the Act was accomplished under a single plan, which was filed in the proceedings before the Commission and approved by it. This plan provided for the liquidation and dissolution of the parent holding company, the recapitalization of its subsidiaries, and the distribution of the stocks of these subsidiaries among the stockholders of the parent. The plan provided that all fees should be payable by the parent company or one of its subsidiaries, as the Commission should approve.

The fee applications which are now pending cover services rendered in connection with the reorganization proceedings, which involved both the recapitalization of the various subsidiaries and the liquidation of the parent. All fees paid will be paid out of assets which were before the Commission and dealt with under the plan.

In the three cases last above mentioned, although they may involve fee applications for services rendered to a parent company, the parent company itself was in each case reorganized or dissolved in the proceedings, the estate and assets of the parent company were in each case before the Commission and were dealt with by the plan which the Commission approved as fair. Consequently, in each case any fees payable by the parent company will be paid out of the estate dealt with under the plan and might therefore affect the fairness of the plan.

None of these pending cases can be affected by the decision of the Court below in the case at bar, since the very foundation of that decision is that the Drexel fee *will not* be paid out of the assets of Electric which were dealt

with by the Plan and *could not* therefore affect to any extent whatever the fairness of the Plan.

*United Corporation—Columbia Gas & Electric Corporation.* In this case *The United Corporation* (United), the statutory parent of *Columbia Gas & Electric Corporation* (Columbia), retained counsel and other experts to advise it with respect to a plan filed by Columbia in 1944 in proceedings before the Commission for reorganization of Columbia under Section 11 of the Act. United was not being reorganized in these proceedings nor were its assets dealt with under that plan.

The plan was eventually abandoned, but United, under date of June 13, 1947, filed with the Commission a request that the Commission require Columbia to reimburse United for fees and expenses, aggregating \$124,350, incurred by it in connection with the plan. Columbia promptly denied any liability for such reimbursement. There the matter now rests. No further action has been taken to date, presumably because the parties have been awaiting a final and authoritative decision in some other case upon the legal question of whether a subsidiary may be required to reimburse its parent for expenses of the latter in connection with the reorganization of the subsidiary.

The only application now pending before the Commission is the application of United to be reimbursed by Columbia. Obviously the Commission has jurisdiction over such application, since if the reimbursement is permitted it will be paid out of the estate or assets of Columbia which were before the Commission and dealt with in the reorganization proceedings.

Thus the issue upon this pending application of United is altogether different from the present case and is one which will in no way be controlled or affected by the decision of the Court below.

### III. There Is No Conflict Between the Decision of the Court Below and Any Other Court Decision.

As the Court below said (R. 306), this case presents a question "as to which no direct decision has been called to our attention or found by us."

As we have already pointed out (*supra*, p. 6) there have been a number of cases which involved Commission jurisdiction over fees payable out of assets of the company being reorganized or dealt with under an approved plan. In every such case the jurisdiction of the Commission has been sustained.

But, until the present case arose, there has been no reported case in any Court dealing with the Commission's powers over fees which are not paid or to be paid, directly or indirectly, from the estate of the corporation the subject of the Section 11 proceedings or out of assets dealt with by the plan.

There is therefore no conflict between the decision of the Court below and any other existing decision.

The Commission argues (p. 18 of its petition) that the opinion below is in conflict, at least in principle, with *Halstead v. Securities & Exchange Commission*, 182 F. 2d 660 (C. A. D. C. 1950). We submit there is no conflict between the cases.

The *Halstead* case was considered by the Court below, which rightly held it inapplicable, saying (R. 308):

"In the *Halstead* case the issue was the power of the Commission to prevent the solicitation by a stockholder's committee of contributions to pay the fees of its counsel *where it was announced by the committee that it would ultimately seek payment of the fees solely out of the estate of the company being reorganized.*"<sup>5</sup>

5. In the opinion in the *Halstead* case, at p. 666 of 182 F. 2d, the Court said:

"Beyond question the coverage of section 11(f) includes fees payable in the court proceedings from company funds, and it is from those funds (and solely from those funds) that the committee here involved has announced it will ultimately seek its compensation."

Thus \* \* \* the eventual payment of the fees might reduce what persons affected by the plan would otherwise receive for their interest in the reorganized company." (Emphasis supplied.)

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Our attention has been called to the fact that in two other petitions for a writ of certiorari now pending in this Court (*Standard Gas and Electric Co. v. S. E. C.*, October Term, 1954 No. 218; and *The United Corporation v. S. E. C.*, October Term, 1954 No. 99) the petitioners have each asserted that there is a conflict between the decision of the Court below in the case at bar and the decisions which the petitioners are respectively seeking to have this Court review.

The facts and issues in each of these two other cases are, for all substantial purposes, identical. We submit that in each case they are wholly different from the present case, and that there is no conflict whatever between these two cases on the one hand and the present case on the other.

The *Standard Gas and Electric Co.* case (No. 218) arose out of a reorganization or liquidation of the Northern States Power Companies (two statutory subsidiaries of Standard Gas and Electric Company (Standard)) which was accomplished under Section 11 proceedings before the Commission. Standard was not itself reorganized in the proceedings, but both it and some groups of its stockholders participated therein, to protect the investment of Standard in the stock of the subsidiaries.

After consummation of the reorganization, counsel for Standard and its stockholders filed applications with the Commission for fees and expenses, to be paid by the Northern States Companies, i.e., out of the assets which had been before the Commission and dealt with under the plan.

The Commission found and ordered, however, that these fees and expenses, in the sum of \$88,000, were properly chargeable to Standard and not to the Northern States Companies. Standard thereupon paid these claimants and sought reimbursement in the District Court from the Northern States Companies, after the Commission filed its application for enforcement of the fee allowances. The District Court upheld the order of the Commission. Standard appealed, and the Court of Appeals affirmed. (*Standard Gas and Electric Company v. Securities & Exchange Commission*, 212 F. 2d 407 (C. A. 8, 1954)).

*The United Corporation* case (No. 99) arose out of the dissolution and liquidation of Public Service Corporation of New Jersey, a statutory subsidiary of The United Corporation (United), under Section 11 proceedings before the Commission. United, though not itself directly involved in the proceedings, appeared and participated to protect its investment in the stock of its subsidiary which was so involved.

After completion of the proceedings, United applied to the Commission for an order directing that its expenses of \$33,580.86 in connection with the dissolution proceedings should be paid by Public Service Electric and Gas Company, successor to Public Service Corporation of New Jersey, which had been the subsidiary of United. The Commission refused and directed that United itself bear these expenses.

The decision of the Commission was reviewed directly by the Court of Appeals under Section 24(a) of the Act, and the action of the Commission was affirmed (*In Re Public Service Corporation of New Jersey*, 211 F. 2d 231 (C. A. 3, 1954)).

It will therefore be seen that in each of these two cases the sole question involved was whether the parent company would itself have to bear the fees and expenses incurred by



it in the proceedings for the reorganization of its subsidiary, or whether it could legally obtain reimbursement therefor from the subsidiary. At no stage in the court proceedings in either case was any question raised by anyone as to the jurisdiction of the Commission, nor was there any dispute over the amount of the fees. The only issue was as to who should pay them.

In no respect is there the slightest conflict between either of these cases and the decision of the Court below in the present case.

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On pages 21 and 23 of its petition, footnotes 11 and 12, the Commission lists a number of cases in which it states that "the Commission has passed upon the fees to be paid to representatives of parent holding companies for services rendered in connection with the reorganization of their subsidiaries."

This statement implies that each of these cases was similar to the present case, namely, that the amount of the fees was at issue and was actually decided by the Commission, and that such fees were paid out of assets which were not dealt with under the plan approved by the Commission.

This, however, by no means is the case.

Due to the difficulty of obtaining sufficient information as to the exact facts in each of these cases, it has not been possible for us to make an analysis of all of them to find out to what extent, if at all, they involved the same issue as the present case. We do know, however, that in a number of them (e.g., *Public Service Corporation of New Jersey*, HCAR No. 12000, and *Northern States Power Company*, HCAR No. 11145, among others) the parent company and the subsidiary were reorganized together under the same



plan, which dealt with all the assets out of which the fees were to be paid.

In many other cases, it appears that not only was no question raised as to the jurisdiction of the Commission, but there was no dispute concerning the amount of the fees, and the Commission took no affirmative action but merely interposed no objection to the payment of the agreed fee. For examples of such cases, see *The United Corporation*, HCAR 6509, *United Gas Corporation*, HCAR 5677, *Derby Gas & Electric Corporation*, HCAR 3236, *National Power & Light Company*, HCAR 7172. Such cases, involving no issue or dispute, could certainly not be considered an acquiescence by the parties in the jurisdiction now asserted by the Commission. Much less could they bind others who were not parties.

Others of the cases cited (as, for example, *Niagara Hudson Power Corporation*, HCAR 11667) were like the *Standard Gas and Electric Co.* and *The United Corporation* cases (*supra*, p. 14), where the issue was not the jurisdiction of the Commission but merely whether the fees and expenses incurred by the parent company could be recouped by it from the subsidiary.

In still other cases (for example, *Louisville Gas & Electric Company*, HCAR 9346, *Central States Utilities Corporation*, HCAR 9411, *Pennsylvania Edison Company*, HCAR 9988, *Interstate Power Company*, HCAR 11359), the parent had agreed, in the plan or otherwise, to pay whatever fees should be awarded by the Commission, which agreement would, of course, preclude it from thereafter questioning the jurisdiction of the Commission to approve and award such fees.

In any event, we submit that no weight can be given to the decisions of the Commission in these various cases without a detailed demonstration that they involved the same question as is involved in the present case. Such a demonstration is wholly lacking.

#### **IV. Brief Discussion of the Merits.**

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##### *A. The Commission Was Without Jurisdiction Over the Drexel Fee.*

The Commission, both in the Court below and in its petition for certiorari in this Court, points to a number of sections of the Act from which, so it argues, its jurisdiction over the fees to be paid by a solvent parent for services in connection with the liquidation or reorganization of a subsidiary can be inferred.

The argument that such jurisdiction can be derived from Sections 11(e) and 11(f) was so fully considered by the Court below (R. 306-310) that we need here add nothing more, except to point out that Senator Wheeler's remarks and the Senate Committee report quoted on pages 12 to 13 of the petition for certiorari were referring, not to the Act as finally enacted, but to Senate Bill 2796 as originally introduced, which clearly did give the Commission jurisdiction over all fees. After these remarks and that report, and before enactment, the Bill was amended to cut down the all-inclusive jurisdiction contemplated in the original Bill, as stated in note 9 on pages 16-17 of the petition.

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The Commission also argues (petition pp. 9-12) that its asserted jurisdiction can be supported by the provisions of Sections 7, 10, and 12 of the Act. These same arguments were made in the Court below, which presumably did not consider they had sufficient merit to require any discussion.

Under these sections, certain fees payable by holding companies in connection with the issuance of some (but not all) securities and the acquisition of some (but not all) securities and other assets are specifically made subject to Commission approval. Since a reorganization under Section 11 of the Act will ordinarily involve, as an incidental element in the larger plan, a transfer or acquisition of

assets or an issue or acquisition of securities, the Commission argues that the jurisdiction expressly given over fees to be paid in connection with such a particular feature of the plan was enough to create an implied jurisdiction over all fees payable with respect to the entire over-all plan.

We submit that to state such a proposition is to answer it. If, as the Court below held, neither Section 11(e) nor Section 11(f) gives the Commission jurisdiction over fees such as are involved in this case, certainly it cannot obtain any help from Sections 7, 10, or 12 of the Act.

Indeed, it has been expressly held that the provisions of Section 7 of the Act (and the same would, of course, apply as well to Sections 10 and 12) need not be complied with in proceedings under Section 11. *Public Service Commission of New York v. S. E. C.*, 166 F. 2d 784 (C. A. 2, 1948), cert. den. 334 U. S. 838.

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At pages 14 to 15 of the petition, the Commission relies on *American Power & Light Company v. S. E. C.*, 325 U. S. 385 (1945), affirming 143 F. 2d 945 (C. A. 2, 1944), a case which is mentioned and held inapplicable without much discussion in the opinion of the court below. The Commission cites this case as holding that a stockholder of a parent company was a "person \* \* \* aggrieved" by an order affecting its subsidiary. By analogy, it argues that in the present case each stockholder of Bond & Share must be considered a "person affected", within the meaning of the Act, by the Section 11(e) Plan for Electric.

In making this argument, however, the Commission has omitted to state that in the case cited by it the holding of the Supreme Court was based on the fact that the interest of the stockholder of the parent company was "in the nature of a derivative or stockholder's action. Inasmuch as he charged illegality and fraud, \* \* \* application to the Board of Directors would have been futile" (325 U. S. at p. 392).

That this would not be true in the ordinary case is shown by *Okin v. S. E. C.*, 143 F. 2d 943 (C. A. 2, 1944), a case which was decided by the same Court (the Court of Appeals for the Second Circuit) and on the same day as the *American Power & Light Company* case.

In that case plaintiff was a stockholder of Electric Bond and Share Company, which was a minority stockholder of American Power & Light Company, which in turn owned all the outstanding stock of Florida Power & Light Company. Plaintiff appealed from orders of the Commission directing the action to be taken by the Florida Company to comply with the Holding Company Act.

The Court held that the plaintiff was a mere shareholder, who had not satisfied the usual requirements as to derivative suits, and that he was, therefore, not a "person aggrieved", and had no standing to appeal from these orders.

The Commission (p. 19 of its petition) complains that "The court below did not cite *Leiman v. Guttman*" (336 U. S. 1). This, however, is not surprising, since the Commission never referred the Court below to that case and never made before it the argument, now found for the first time on pp. 17-19 of its petition, that the decision in that case was applicable to the present case.

Be this as it may, however, the language of the statute considered in *Leiman v. Guttman* is so different from the Act that a decision under the one is of no value in construing the other.

#### *B. The Commission Erred in Reducing the Drexel Fee.*

As we have already stated (*supra*, p. 4), when this case was before the Court below, in addition to the question of the Commission's jurisdiction there was also presented and argued the second question of whether the action of the Commission, in reducing the Drexel fee from the \$100,000 agreed upon between it and Bond & Share to \$50,000 (R.

264), gave due weight to their agreement, and whether such action was supported by substantial evidence. The Court below, having concluded the Commission had no jurisdiction over the fee here involved, never reached or discussed in its opinion this second question.

While it is probably not appropriate for us to enter at this time into any extended discussion on the merits with respect to the reduction by the Commission of the fee, we believe that the Court should know that this other question is involved in the case and that it, as well as the jurisdiction question, might properly constitute the basis for the affirmance of the Court below.

In this case Bond & Share and Drexel, bargaining at arm's length, agreed upon a fee of \$100,000. The Commission in its Findings and Opinion (R. 262-264) never even referred to this agreement and presumably considered it wholly immaterial.

It has, however, been held in three recent Court of Appeals cases that in any case where the Commission has jurisdiction over fees in a proceeding under Section 11 of the Act, the amount of the fee agreed upon between the client and its professional adviser is a relevant and important fact which must be considered and given due weight by the Commission in connection with its approval or disapproval of such fee.

In each of these cases, the Commission was reversed for having ignored or given insufficient weight to the agreement.

See *In Re North American Light and Power Company*, 202 F. 2d 638 (C. A. 3, 1953; certiorari denied, — U. S. —, 74 S. Ct. 30) where the Court stated:

“\* \* \* the Securities and Exchange Commission exercised its power over fees in the way that was not just and reasonable when it awarded Masterson attorney's fees in an amount less than that sought by him and agreed upon by his client, the North American Light & Power Company.”

Again, in *Standard Gas & Electric Co. v. Securities and Exchange Commission*, 212 F. 2d 407 (C. A. 8, 1954), the Court stated (at p. 412):

“Under the circumstances, the Commission should have accorded greater weight to the contractual relationship between the parties. \* \* \* under the facts presented here, the agreement between counsel and company was not given its true evidentiary weight by the Commission.”

And *In Re Public Service Corporation of New Jersey*, 211 F. 2d 231 (C. A. 3, 1954), the Court said:

“\* \* \* The Commission apparently had in mind the significance of the lawyer-client arrangement with respect to the amount of the fee but failed to properly evaluate it against the present background. \* \* \* As we see it all indications from the record are that the amount submitted was the fee which petitioners, after arm's length discussion with their client, were willing to accept as reasonable compensation for their endeavors and which their client felt they had earned and was willing to pay them. There is no substantial support for the Commission's finding that the figure requested by the petitioners was excessive in relation to their services or that the payment of that amount would be unfair to the public security holders.”

In the present case the only testimony as to the value of Drexel's services is that of Mr. Hopkinson, senior partner of Drexel (R. 120-196), and that of Mr. Ginsburg, vice-president of Bond & Share (R. 197-211). Each stated that \$100,000 was fair and reasonable. There was no testimony to the contrary from any one.

It is therefore submitted that the findings of the Commission that \$50,000 was a fair and reasonable fee is not supported by any evidence at all, let alone by substantial evidence in the light of the record as a whole, as required

by *Universal Camera Corp. v. National Labor Relations Board*, 340 U. S. 474 (1951).

Under these circumstances, we submit that the denial by the Commission of the \$100,000 fee agreed upon was arbitrary, capricious, an abuse of discretion, and not in accordance with the law.

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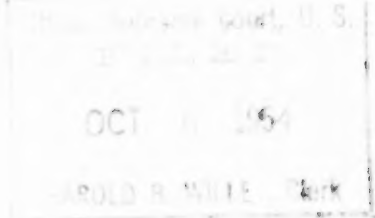
It is accordingly respectfully submitted that the petition for certiorari should be denied.

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*Counsel for Drexel & Co.*

August 9, 1954.



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IN THE

# Supreme Court of the United States

---

October Term, 1954.

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No. 153.

---

SECURITIES AND EXCHANGE COMMISSION,  
*Petitioner,*

*v.*

DREXEL & CO.

---

On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Second Circuit.

---

SUPPLEMENTAL BRIEF FOR DREXEL & CO.

---

HENRY S. DRINKER  
THOMAS REATH  
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Philadelphia 3, Pa.

IN THE  
Supreme Court of the United States.

---

OCTOBER TERM, 1954.

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No. 153.

---

SECURITIES AND EXCHANGE COMMISSION,  
*Petitioner,*

*v.*

DREXEL & CO.

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT.

---

**SUPPLEMENTAL BRIEF FOR RESPONDENT.**

This supplemental brief is filed, pursuant to Rule 24(4) of the Rules of this Court, in answer to the Commission's Reply, which was not received by us until October 4, 1954.

In this case the Court below held that the Commission had no jurisdiction over the fee agreed to be paid by Bond & Share to Drexel for services rendered in the reorganization of Electric.

In its Petition for Certiorari the Commission took the position that this decision involved an important question of Federal law, and stated that there were four proceedings pending before the Commission in which this same issue was involved. The implication of its argument was that

unless the Supreme Court reviewed the present case the effect of the decision below would be to deprive the Commission of jurisdiction over fees in the four cases pending before it.

In our Brief in Opposition, we showed, *first*, that the four pending cases were on their facts fundamentally different from the present case, and *second*, that under every decided case (including the opinion of Chief Judge Chase in the present case, R. 307-308), it is clear beyond any question that the Commission does have jurisdiction over the fees in the four pending proceedings. Thus the decision in the present case, whatever it might have been, would have had no effect whatever on these other cases.

In its Reply the Commission has, as we see it, completely reversed its former position. Now, instead of arguing that a review by the Supreme Court of the present decision is necessary because of the effect it might have on the four pending cases, the Commission argues that if it has fee jurisdiction in these pending cases (which is conceded) it should by analogy have such jurisdiction in the present case and that the Court below erred in deciding otherwise.

In other words, the Commission now confines itself to the argument that the present case was wrongly decided by the Court below.

The Commission does not (and indeed it could not) challenge our statement (p. 8 of our Brief in Opposition) that all the proceedings under Section 11 of the Act are now substantially completed. If there were any proceedings now pending, either before the Commission or before any Court, where the effect of the decision in the present case would be to deny or restrict the Commission's fee jurisdiction, the Commission would of course have referred to them in its Petition or its Reply. We may therefore take it that there are now none, and that there will be none in the future. And the mere assertion that a case has been wrongly decided in the Court below is not, as we understand

it, sufficient to justify the granting of a Petition for Certiorari.

Respectfully submitted,

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October 5, 1954

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IN THE

# Supreme Court of the United States

October Term, 1954.

No. 153.

SECURITIES AND EXCHANGE COMMISSION,  
*Petitioner,*  
*against*

DREXEL AND COMPANY,  
*Respondent.*

On Writ of Certiorari to the United States Court of Appeals  
for the Second Circuit.

## BRIEF FOR RESPONDENT.

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IN THE  
Supreme Court of the United States.

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October Term, 1954.

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No. 153.

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SECURITIES AND EXCHANGE COMMISSION,  
*Petitioner,*  
*against*

DREXEL AND COMPANY,  
*Respondent.*

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT.

---

**BRIEF FOR RESPONDENT**

---

**QUESTIONS PRESENTED.**

In a voluntary reorganization of a registered holding company under Section 11(e) of the Public Utility Holding Company Act of 1935 where no receiver or trustee is appointed, does the Securities and Exchange Commission have jurisdiction over a fee paid by a stockholder-parent of the reorganized company to the stockholder's own financial adviser out of its own funds, the funds of the reorganized company not being involved?

The Court of Appeals for the Second Circuit (per Chase, Chief Judge, and Swan and Medina, Circuit Judges) has given a unanimous negative answer to this question (R. 305),<sup>1</sup> and this Court has granted a writ of certiorari on the petition of the Securities and Exchange Commission (the "Commission") to review that decision (R. 341).

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1. All references (R. ) are to the page of the printed Transcript of Record.

The question is essentially a narrow, technical one of the proper construction of the Public Utility Holding Company Act of 1935 (49 STAT. 803 *et seq.* (1935), 15 U. S. C. § 79 (1952) (the "Act")) and primarily of two brief phrases contained in Section 11 thereof. Those phrases and the questions concerning them which arise in this case are:

Does Section 11(e),<sup>2</sup> in requiring that the Commission approve a voluntary reorganization plan submitted by a registered holding company only if "fair and equitable to the persons affected by such plan", grant the Commission jurisdiction to regulate fees paid to the financial consultant of a stockholder-parent, *not* out of the funds of the reorganized company which is the subject of the plan, but out of the funds of the stockholder-parent itself, which is not a party to the plan?

Does Section 11(f),<sup>2</sup> relating exclusively to receivership and trustee proceedings, in referring to fees "in any such proceeding", give the Commission jurisdiction over a fee of the type described above in a Section 11(e) proceeding where no trustee or receiver is appointed?

The question of policy is presented whether the Commission should be permitted to imply from the enumerated powers the Act does give it, additional powers which the Congress struck from the bill prior to its passage. In other words, are the powers of the Commission all-inclusive in relation to what the investor in a "reorganized" company can do with his own assets?

There can be no question of impairing the Commission's capacity to carry out the integration and simplification mandate of Section 11. For one thing, the question of such a fee as the one involved here is at most peripheral. In any event, the reorganization of the industry in accord-

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<sup>2</sup> Excerpts appear in footnotes on pp. 9 and 10-11, respectively, and full text in Appendix A hereto.

ance with the requirements of Section 11 has now been virtually accomplished and the Commission's responsibilities therefor are practically at an end.

On January 11, 1954, the chairman of the Commission, Ralph H. Demmler, testified before a committee of the Congress that, aside from fee applications, "the reorganization and simplification proceedings under section 11 of the Holding Company Act now are substantially completed." HEARINGS BEFORE SUBCOMMITTEE OF COMMITTEE ON APPROPRIATIONS OF THE HOUSE OF REPRESENTATIVES, 83rd Cong., 2d Sess., Part 1, p. 228 (1954).

#### STATEMENT OF THE CASE.

The reorganization proceeding here involved is solely that of Electric Power & Light Corporation ("Electric"), a registered holding company and a statutory subsidiary of Electric Bond and Share Company ("Bond & Share"). Electric alone filed the voluntary reorganization plan approved under Section 11(e) of the Act (R. 4a). The instant proceeding is not, and could not legally be, a proceeding for the reorganization of Bond & Share, the statutory parent of Electric, or for the reorganization of any other subsidiary of Bond & Share.<sup>3</sup> Other proceedings in which Bond & Share and its other subsidiaries progressed toward compliance with Section 11 have no relevance to this case.

Following the affirmance by the Court of Appeals of the Commission's order under Section 11(b)(2) of the Act

---

3. Electric could not submit a plan under Section 11(e) for the reorganization of its parent, Bond & Share, or for any "sister" company. The section permits any registered holding company or any subsidiary company to submit a plan for the divestment of control, securities, or other assets, or for other action "*by such company or any subsidiary company thereof*" for the purpose of enabling "*such company or any subsidiary company thereof*" to comply with the provisions of subsection (b). (Italics supplied.) Electric could and did file a plan only for the purpose of enabling *Electric and its subsidiaries* to comply with Section 11(b).

that Electric must be dissolved (11 SEC 1146, H.C.A. Rel. No. 3750<sup>4</sup> (1942), *aff'd* 141 F. 2d 666 (1st Cir. 1944), *aff'd* 329 U. S. 90 (1946)), Bond & Share in May, 1945, retained Drexel & Co. ("Drexel"), an investment banking firm with extensive knowledge and experience in financial matters, to advise it in the protection of its investment in the reorganization of Electric.

In this capacity Drexel rendered professional services of great value to Bond & Share, which continued until the many conflicting proposals for the dissolution of Electric had been developed into the plan which was ultimately consummated, a period of more than three years (R. 61a-116a).

There were four principal plans presented for compliance by Electric with the 1942 order of the Commission. Each of these plans pertained only to the reorganization of Electric, and was submitted between 1945 and 1948 as follows: the first by Electric (R. 70a), the second by Bond & Share (R. 321), the third by both companies jointly (R. 324), and the fourth and final plan by Electric alone (R. 4a).

There were substantial disagreements between Bond & Share, the parent, and Electric, the subsidiary, as to the terms and provisions of the first two plans. (R. 68a, 69a-70a, 110a, 206a, 207a). The fourth plan (the "Plan"), which was finally consummated, was filed by Electric on March 25, 1948. (R. 4a).

Briefly, the Plan provided for the transfer by Electric to a new holding company of certain cash and of its securities in electric subsidiaries, the retirement of the preferred stocks of Electric through an exchange for common stocks of United Gas Corporation and of the new holding company, a cash settlement of certain claims against Bond & Share and the dissolution of Electric.

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4. Releases issued by the Commission under the Public Utility Holding Company Act of 1935 are herein referred to as "H.C.A. Rel. No. —."

Bond & Share was not a party to the Plan. It did not submit the Plan. It was not and could not be the subject of the Plan.

The Plan, as later amended in certain particulars required by the Commission (see R. 34a, H. C. A. Rel. No. 8889, March 2, 1949), was approved by the Commission on March 7, 1949 (R. 36a).

On application of the Commission, the District Court on April 22, 1949 entered an order enforcing the Plan (R. 41a). The Court of Appeals for the Second Circuit affirmed on August 27, 1949 (In re *Electric Power & Light Corporation*, 176 F. 2d 687). The Plan was thereupon consummated.

In the course of the proceedings before the Commission, Bond & Share filed an Application-Declaration (R. 330), dated March 31, 1948, referring to Sections 10, 11, 12(c) and 12(f) of the Act, in connection with certain of its own transactions resulting from consummation of the Electric Plan.

The Commission's order of March 7, 1949, approving the Plan, did not purport to reserve jurisdiction over fees and expenses incurred by Bond & Share in connection with its Application-Declaration (R. 39a).

The only reservation of jurisdiction as to fees appearing in the order is as a condition to the granting of Electric's application for approval of its Plan.

With respect to this Plan, which had been submitted by Electric and to which Electric was the only party, the Commission's order read in pertinent part as follows:

"IT IS ORDERED on the basis of the record herein and the said Findings and Opinion, pursuant to Section 11(e) of the Act and other applicable provisions of the Act, that the said Plan, as amended, be and it hereby is approved subject to the terms and conditions contained in Rule U-24 and to the following additional terms and conditions:

. . . . .

"2. That jurisdiction be and hereby is specifically reserved to determine the reasonableness and appropriate allocation of all fees and expenses and other remuneration incurred or to be incurred in connection with the said Plan, as amended, and the transactions incident thereto . . . ;" (R. 38a).

There were also other conditions to the approval of the Plan, but there were no conditions to the part of the order granting and permitting to become effective the Application-Declaration of Bond & Share (R. 39a).<sup>5</sup> In a separate paragraph the Commission's order simply stated:

"It is Further Ordered that the Application-Declaration of Bond & Share referred to above be and it hereby is granted and permitted to become effective."

In an amendment to the Plan made at the insistence of the Commission (R. 270a-271a), Electric had, *inter alia*, agreed to pay such fees and expenses of participants in the proceedings as the Commission should allow (R. 271a). But no such agreement was requested of the parent Bond & Share, and it made none.<sup>6</sup>

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5. Rule U-24 contains certain general reservations of jurisdiction with respect to Applications under the Act, but none of these general reservations relates to fees. Under Section 10(b)(2) of the Act the Commission is *required* to approve an acquisition *unless* it finds, among other things, that fees are not reasonable. There is no grant of jurisdiction over fees except as findings are made at the time of approval or disapproval of the proposed action. Sections 12(c) and (f), also cited in Bond & Share's application, do not even refer to fees. See pp. 27-29 herein.

6. Drexel likewise never agreed that the fee here involved to be paid by Bond & Share would be subject to Commission approval. While the Commission in its brief (p. 9; p. 37, fn. 23) asserts that both Drexel and Bond & Share understood and agreed that the amount to be paid would be such amount as the Commission might approve, the actual testimony with respect to the only conversation concerning fee arrangements which took place between Drexel and Bond & Share, until long after Drexel's work was entirely completed, was as follows:

" . . . that nobody could tell the extent of the work or what it was going to involve and I was warned that it would be subject in all probability to approval by the Securities and Exchange



Bond & Share, fully familiar with the amount and quality of the services rendered to it by Drexel, in arms-length negotiation, agreed with Drexel that \$100,000 was fair and reasonable compensation for its services in advising Bond & Share with respect to the reorganization of Electric (R. 198a).

After consummation of the Plan, when applications for fees were filed with the Commission, Bond & Share and Drexel filed appropriate applications (R. 54a, 59a) requesting that the Commission approve a fee of \$100,000 to be paid by Electric to Drexel for its services rendered to Bond & Share. Electric opposed the request that it pay the Drexel fee (R. 251a).

At the hearing before the Commission, uncontradicted evidence showed that \$100,000 was a fair and reasonable fee for the services performed and that it had been agreed to as such by Bond & Share (R. 120a-211a).

In its findings, opinion, and order on the various fee applications, the Commission approved a payment by Bond & Share to Drexel of only \$50,000 (R. 212a). It expressly directed this fee be paid by Bond & Share, not by Electric, and it refused to permit the payment by Bond & Share of any amount in excess of \$50,000.

Bond & Share did not contest this order, but determined that it would itself, if permitted to do so, pay the

---

Commission anyway, so there didn't seem to be much point in trying to do anything more.

"We understood they would pay us, of course, for our services, but they could only pay us, they believed, such amount as might be approved by the Commission." *Testimony of Edward Hopkinson, Jr., senior partner of Drexel & Co.*, R. 193a.

This clearly did not amount to an understanding or agreement that the Drexel fee would be only such amount as might be approved by the Commission, and Bond & Share has not taken that position. In addition, at the date of the conversation referred to, and even as late as the day the quoted testimony was given, Bond & Share planned to obtain reimbursement from Electric for the Drexel fee. This expectation was subsequently abandoned. Consequently Bond & Share's belief referred to is not one based on the facts as they actually developed.

entire Drexel fee of \$100,000 (R. 283a). Bond & Share abandoned its prior position that the Drexel fee should be paid by Electric.

Consequently, no part of whatever fee Drexel now receives, will, directly or indirectly, be paid by or charged to Electric, the holding company which filed and was the subject of the Plan.

On June 25, 1952, the Commission filed in the District Court an application for enforcement of its order with respect to the various fees for which claims had been made (R. 270a).

Drexel filed objections thereto relating to its fee (R. 278a). Bond & Share's position, that it desired, if permitted, to pay the \$100,000, was contained in a letter to Drexel (R. 283a) which was filed with the District Court by Drexel.

After argument, the District Court, in a one paragraph opinion, overruled the Drexel objections (R. 288a, 289a). From the order of the District Court, entered February 17, 1953 (R. 289a) pursuant to that opinion, Drexel appealed.

The Court of Appeals in a considered opinion unanimously reversed the District Court with respect to the Drexel fee (R. 305, 210 F. 2d 585), whereupon this Court granted the Commission's petition for certiorari (R. 341).

### **SUMMARY OF ARGUMENT.**

The Public Utility Holding Company Act of 1935 is a long and complex statute which was drafted by competent legally-trained draftsmen, acutely conscious of the importance of their work and its impact on a multi-billion dollar industry. It does not purport to regulate all the activities of public utility holding companies. Instead it sets forth in almost tedious detail the things which cannot be done without Commission approval and the things which the Commission shall or may require of public utility holding companies and their subsidiaries.

Had the Congress wished to give the Commission the general authority over fees the Commission is claiming in this case, the Congress could and would have done so. But nowhere in the Act is the Commission granted the power to regulate the fees paid by a stockholder-parent in protecting its investment in a subsidiary company being reorganized pursuant to the *subsidiary's* voluntary Section 11(e) plan.

Under Section 11(e) <sup>7</sup> the Commission has jurisdiction over fees to be paid out of the estate being reorganized. Such jurisdiction is based on the Commission's duty to approve only a plan which is "fair and equitable to the persons affected", and the possibility that a plan otherwise "fair and equitable" might be rendered unfair if the reorganization estate is dissipated in the payment of exorbitant or unjustified fees. In re *Electric Bond & Share Company*, 80 F. Supp. 795 (S. D. N. Y. 1948).

Section 11(e) and the authority it reposes in the Commission to approve or reject a plan do not support any claim of jurisdiction over the fee Bond & Share, the parent, may pay to Drexel, however, because the assets of Bond & Share are not and could not in this proceeding be a part of the estate in reorganization. The "persons affected" by Electric's Plan and the reorganization of its assets are the stockholders of Electric, and they are manifestly not concerned with fees paid by Bond & Share to its adviser.

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7. The full text of Section 11(e) is contained in Appendix A hereto. In pertinent part such section provides as follows:

"Sec. 11(e) . . . any registered holding company or any subsidiary company of a registered holding company may . . . submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If . . . the Commission shall find such plan . . . *fair and equitable to the persons affected by such plan*, the Commission shall make an order approving such plan . . . ." (Italics supplied.)

It is far-fetched to suggest as a basis of Commission jurisdiction in this case that the shareholders of Bond & Share may be "persons affected" by the Electric Plan within the meaning of Section 11(e). There is no need, in determining whether or not a plan is "fair and equitable", to look beyond the immediate shareholders of the company (Electric) which is the subject of the reorganization plan. If the plan is "fair and equitable" to such shareholders, it cannot be otherwise to the shareholders of such shareholders.

To urge that the stockholders of Bond & Share are "persons affected" by Electric's Plan is futile in any event, for, even if they were, this would not give the Commission any power over the Drexel fee. The only power the Commission has under Section 11(e) is to approve the Plan as "fair and equitable" or to reject it. The Drexel fee is no part of the Plan and, not being payable out of the assets included in the Plan, can have no effect on its fairness to the "persons affected" by the Plan, whoever they may be.

In a colloquial sense, any action of Bond & Share (which had numerous other assets in addition to its interest in Electric), whether in another's reorganization or in the course of its ordinary affairs, "affects" its stockholders. But that is not the statutory sense, since that effect does not arise out of Electric's Plan, which is the sole basis of the Commission's jurisdiction. Payment of the Drexel fee by Bond & Share has no more effect on its stockholders than any other business expense of Bond & Share.

In the other section of the Act primarily concerned, Section 11(f),<sup>8</sup> the statutory language is clear that the juris-

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8. The full text of Section 11(f) is contained in Appendix A hereto. In pertinent part such section provides as follows:

"(i) *In any proceeding* in a court of the United States, whether under this section or otherwise, *in which a receiver or trustee is appointed* for any registered holding company, or any subsidiary company thereof . . . The Commission may . . . require that any or all fees, expenses, and remuneration, to

diction there given the Commission over fees is limited to a court proceeding in which a trustee or receiver is appointed.

The Commission seeks to divert attention from the crucial phrase of this section—"in any *such* proceeding"—by roaming freely over the rest of the Act in an attempt to avoid the plain meaning of Section 11(f). Only by exorcising that phrase from the section can it hope to reach its conclusion. But like the mountain that must be climbed, the phrase is always "there".

There is no occasion to refer to legislative history when the language of a statute is plain, *Schwegmann Brothers v. Calvert Distillers Corp.*, 341 U. S. 384, 395 (1951) (concurring opinion), *rehearing denied*, 341 U. S. 956 (1951); *Electric Bond & Share Co. v. SEC.*, 303 U. S. 419, 438 (1938); *Lake County v. Rollins*, 130 U. S. 662, 670-71 (1899), and no language could be plainer than Section 11(f) is in this respect.

But reference to legislative history in this case, as detailed below, merely reinforces the plain meaning of the Section—it applies, and was intended to apply, only to reorganizations where a trustee or receiver has been appointed.

Even after performing the Commission's proposed major surgery on Section 11(f) and assuming, *arguendo*, as the Court of Appeals did below (R. 310), that the section might apply where no trustee or receiver is appointed, still the Commission's authority over fees is limited to those paid "in connection with" the reorganization—which can only mean a fee paid out of the assets of the reorganized company.

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whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, *in any such proceeding*, shall be subject to approval by the Commission." (Italics supplied.)

To the extent the Commission might claim to have had jurisdiction over some portion of the Drexel fee under other sections of the Act, such as Section 10, it exhausted that jurisdiction when it permitted the Application-Declaration of Bond & Share under those sections to become effective without any reservation of jurisdiction.

As a creature of statute the Commission has only the powers conferred by the Congress. A number of sections of the Act bestow fee jurisdiction on the Commission in carefully enumerated instances—a clear indication of Congressional intention not to confer general authority over all fees, but to limit the jurisdiction of the Commission over fees to the instances enumerated.

This conclusion is strongly reinforced by the fact that Section 11(f) as originally introduced conferred authority over all fees paid in connection with *any* reorganization and that this provision was replaced, in the course of the Senate's consideration of the bill, by the more limited provision now in the Act.

Despite this framework and history of the statute, the Commission's major point in this case, reduced to its essentials, is:

Since the Commission has jurisdiction over so many kinds of transactions under the Act, including fees in certain instances, it somehow ought to have jurisdiction over the Drexel fee here involved—even though the very carefully drafted statute does not confer jurisdiction, and was amended clearly to deny it.

This reasoning, as well as the result it would reach, is untenable and clearly incompatible with a government of laws and should be rejected by this Court.

## ARGUMENT.

**A. The Commission Obtains No Jurisdiction Over a Fee to Be Paid by a Stockholder-Parent, and Not By or Out of the Estate of the Subsidiary in Reorganization, from the Commission's Power to Approve or Reject the Voluntary Reorganization Plan of the Subsidiary Under Section 11(e) of the Act.**

Section 11(e) contains no express grant of jurisdiction to the Commission over fees and expenses arising out of reorganizations thereunder.

Since a Section 11(e) plan may be approved only if "fair and equitable to the persons affected", the Commission has been permitted to exercise jurisdiction over fees which diminish the reorganization estate in order to protect the integrity of its decision on the merits of the plan. In *re Electric Bond & Share Co.*, 80 F. Supp. 795 (S. D. N. Y. 1948). All of the cases relied on by the Commission in its brief as authoritative interpretations of Sections 11(e) and (f) are rooted in this principle.<sup>9</sup> All involve fees which were to be charged to the reorganization estate. None involves a fee which was not to be so charged, as in the instant case.

The opinion of Chief Judge Chase in the Court of Appeals followed this principle. He stated (R. 307-308): "Whatever fees and expenses are to be paid *by the reorganized company* serve to decrease its assets and persons who have an interest in such assets are, of course, affected by a plan which provides for payments which diminish their amount." (Italics supplied.)

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9. These cases are:

*Standard Gas & Electric Co. v. SEC*, 212 F. 2d 407 (8th Cir. 1954), *cert. denied* 348 U. S. 831 (1954); *In re Public Service Corp. of New Jersey*, 211 F. 2d 231 (3rd Cir. 1954), *cert. denied* 348 U. S. 820 (1954); *SEC v. Cogan*, 201 F. 2d 78 (9th Cir. 1952); *Halsted v. SEC*, 182 F. 2d 660 (D. C. Cir. 1950), *cert. denied* 340 U. S. 834 (1950); *In re Electric Bond & Share Co.*, *supra*.



But he further held that where, as here, the payment does not come out of and therefore does not diminish the assets of the reorganized estate, the Commission has no jurisdiction over such payment. This is a logical corollary of the reasoning the courts have followed in finding that the Commission may control the fees to be paid out of the estate under the power to approve a plan if "fair and equitable to the persons affected".

Bond & Share's fees cannot conceivably affect the Electric Plan. What Bond & Share does with its assets is totally irrelevant to the fairness of that Plan. Yet the power to grant or withhold approval of Electric's Plan is the only basis under Section 11(e) for Commission jurisdiction over fees.

Apparently unable to deny this factual obstacle, the Commission attempts to stretch Section 11(e) by suggesting that the stockholders of Bond & Share may be regarded as "persons affected" by Electric's Plan within the meaning of Section 11(e). Chief Judge Chase met and disposed of this part of the Commission's argument as follows (R. 308a):

" . . . But what fees Bond and Share may pay Drexel & Company, will not affect the asset position of Electric in the slightest. They will not affect the stockholders of Electric and so will not affect the stockholders of Bond and Share in any respect by reason of Bond and Share's being a stockholder of Electric, and Electric's being a subsidiary of Bond and Share. True such payment will 'affect' the stockholders of Bond and Share but not as a result of the provisions of Electric's plan and only as such stockholders are 'affected' by the expenses which Bond and Share incurs in its own business and pays out of its own funds. In other words, the fee to be paid Drexel & Company by Bond and Share is but a business expense of Bond & Share . . . ."

If the Commission's argument were sound, the stock-

holders of a corporate stockholder of Bond & Share would also be "persons affected" by the Electric Plan, and in turn, their stockholders *ad infinitum*. Such a result is absurd, and cannot represent a proper interpretation of the Act.

Unable to derive the result it seeks from the sections of the Act involved in this case, the Commission has resorted in its brief to cases decided under unrelated sections of the Act and even under completely different statutes, none of which has any bearing on this case.

*American Power & Light Company v. SEC*, 325 U. S. 385 (1945), *rehearing denied*, 325 U. S. 843 (1945), cited by the Commission for the proposition that stockholders of Bond & Share are "persons affected" by Electric's Plan, decided only the procedural questions of the rights of stockholders to be heard on appeal, as a "person or party aggrieved" under Section 24(a) of the Act, from orders directed to their corporations. Such distinctly procedural decisions afford no guide to the meaning of the substantive requirements of Section 11(e) that a plan be "fair and equitable to the persons affected".

In one of the two cases involved in the *American* opinion, Okin, as a stockholder of Bond & Share, was permitted to appeal from a Commission order with respect to a proposed extension of a note held by Bond & Share. He was heard on appeal as though in a derivative cause of action since his charge of "illegality and fraud" made application to the Board of Directors of Electric "futile"—if his charges were true, his interest would not be represented. In a companion case in the Second Circuit which was not appealed, Okin was held to have no standing to appeal as a person "aggrieved" since he had not perfected his derivative rights under Fed. R. Civ. P. 23(b). *Okin v. SEC*, 143 F. 2d 943 (2nd Cir. 1944).

In the other case covered by the *American* opinion, *American Power & Light Company*, as a stockholder in

Florida Power & Light Company, was permitted to appeal from a Commission accounting order which would have reduced Florida's surplus available for dividends even though Florida itself was protesting the order in another circuit. In that instance, however, American was heard on appeal because the Court held that it had a substantial financial or economic interest which was "distinct" from that of Florida. Thus the Court stated that the order "does not deprive the corporation [Florida] of any asset or adversely affect the conduct of its business in the manner it affects the petitioner [American], whereas the order has a direct adverse effect upon American as a stockholder entitled to dividends" (325 U. S., at 389). In the instant case, of course, there is in no sense a financial interest of Bond & Share's stockholders which is "distinct" from that of Bond & Share itself.

The other principal case relied upon by the Commission, *Leiman v. Guttman*, 336 U. S. 1 (1949), did not even arise under the Holding Company Act, but under Chapter X of the Bankruptcy Act. Chapter X expressly requires the court, in approving a reorganization plan, to satisfy itself that fees paid by "the debtor . . . or by *any other person*" (italics supplied) are reasonable. (52 STAT. 840, 897 (1938), 11 U. S. C. § 501 *et seq.*, § 621(4) (1952)). There is no such provision in the Holding Company Act.

Prior to the enactment of Chapter X, when the previous section of the Bankruptcy Act dealing with corporate reorganizations, Section 77B (48 STAT. 912 *et seq.* (1934)) contained no such express command, the courts did not attempt to regulate fees paid by individual stockholders from their own funds, but contented themselves with awarding or denying compensation out of the estate. See, e.g. *Teasdale v. Sefton Nat. Fibre Can Co.*, 85 F. 2d 379 (8th Cir. 1936).<sup>10</sup>

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10. Under a provision of Section 77B specifically requiring the court to supervise the arrangements of committees, and relying in part on the law of New York as to the discharge of counsel, the court

That a specific provision in the new statute was required to move courts of equity, which are traditionally regarded as having broad implied powers, to the point of regulating fees paid by individual stockholders out of their own funds emphasizes the invalidity of the Commission's attempt in this case to assert jurisdiction over such a fee without express authority in the Act. For, as an administrative agency, its powers must in every case be traced to a wellspring in the Act.

At about the time the Plan was consummated, Bond & Share had total assets with a carrying value of about \$445,000,000, including \$36,000,000 carrying value for its holdings in Electric. (See *Re Electric Bond & Share Co.*, H. C. A. Rel. No. 9980, July 28, 1950, p. 21). Under the circumstances, Bond & Share had not only the right, but virtually the duty, to seek the best advice it could get in attempting to protect that investment in the course of Electric's forced dissolution.

It made an arms-length agreement with Drexel, a non-affiliated firm, and, when the services had been completed and it had full knowledge of their value, Bond & Share agreed that \$100,000 constituted fair and reasonable compensation to Drexel for those services.

Can there be any warrant in public policy—there is none in the Act—for striking down such a normal, reasonable business arrangement?

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did regulate counsel fees paid by a creditor's committee out of dividends paid to the depositing creditors. *Re McCrory Stores Corporation*, 91 F. 2d 947 (2d Cir. 1937), cert. denied 302 U. S. 725 (1937). But the courts did not, as the Commission here seeks to do, infer general authority over fees from their duty to supervise the estate and the arrangements of committees.

**B. The Commission's Fee Jurisdiction Under Section 11(f) Pertains Only to Reorganizations in Which a Trustee or Receiver is Appointed.**

Section 11(f), the trustee and receivership section, provides in pertinent part as follows (for full text, see Appendix A hereto):

*"In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof . . . In any such proceeding a reorganization plan . . . shall not become effective unless . . . approved by the Commission . . . The Commission may . . . require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission."* (Italics supplied.)

The Commission's contentions that this section conferred jurisdiction over the Drexel fee were properly rejected by the Court of Appeals.

The principal ground for the conclusion of the Court below is one clear and unalterable fact: the phrase "in any such proceeding" in the final sentence of Section 11(f) limits such jurisdiction to court proceedings in which a trustee or receiver is appointed. Nothing could be clearer.

There is no other remotely reasonable meaning for the section.

On this point, Chief Judge Chase stated (R. 309-10):

"The appellant contends that the provisions for the approval of fees, expenses and remuneration in this subsection is limited by the words 'in any such proceeding' to those in which a trustee or receiver should be appointed and, since there was no such ap-

pointment in this proceeding, the subsection does not here apply. It is to be noticed that subsection (f) is not confined to Sec. 11 proceedings but applies to any proceeding in any court of the United States in which a trustee or receiver is appointed for any registered holding Company, or any subsidiary thereof. As to that the words 'whether under this section or otherwise' leave no doubt whatever. Thus the only words of limitation are 'in which a trustee or receiver is appointed for any registered holding Company, or any subsidiary thereof,' and the phrase 'in any such proceeding' found in the last sentence in the subsection can refer only to a proceeding so described by the limiting words. The same words are used earlier in the subsection to make it plain that whenever a trustee or receiver has been appointed for any registered holding company, or its subsidiary, in any proceeding in the federal courts no reorganization plan may emerge from the proceeding and become effective 'unless such plan shall have been approved by the Commission' after hearing, if it wants to have one, prior to the submission of the plan to the court. And finally, even where the proceeding had been as closely controlled by the court as it would be when a court appointed trustee or receiver was an active participant in it, such supervision was supplemented by making all fees, expenses and remuneration paid in connection with any reorganization, dissolution, liquidation, bankruptcy or receivership in which the end result was an effective reorganization plan subject to the approval of the Commission, provided it so required by rules, regulations or by order which it might deem necessary or appropriate in the public interest or to protect investors or consumers. It was to make this clear that the provision for Commission approval of fees, expenses and remuneration was put into subsection (f) and had Congress intended to make that provision applicable to



proceedings other than the particular kind described in the subsection it, presumably, would have omitted the word 'such' from the phrase 'in any such proceeding' in the last sentence of the subsection. Now to construe the provision as though the word 'such' were not in the phrase would amount to a broadening as far reaching as the scope of the words 'in any proceeding'."

There is no occasion here to refer to legislative materials. "Resort to legislative history is only justified where the face of the Act is inescapably ambiguous . . ." *Schwegmann Brothers v. Calvert Distillers Corp.*, 341 U. S. 384, 395 (1951) (concurring opinion). "It is unnecessary to review . . . the cited statements from the legislative halls. The Act speaks for itself with sufficient clarity." *Electric Bond & Share Co. v. SEC*, 303 U. S. 419, 438 (1938).

However, in the case at bar, such legislative history as is pertinent to the Act as passed merely confirms the plain meaning of the section.

The single most significant point in the legislative history is the deliberate change which the Congress made with respect to the Commission's jurisdiction over fees paid in connection with reorganizations.<sup>11</sup>

The form of Section 11(f) in S. 1725 (therein numbered Section 11(d)), as originally introduced on February 6, 1935, and S. 2796, as originally reported out of Committee May 9, 1935, granted the Commission jurisdiction over fees paid in connection with *any* reorganization. See (a) and (b) in Appendix B.

But in the bill as passed, the section was changed in a vital respect. The more general fee jurisdiction was eliminated, and there was substituted the present form of the

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11. Appendix B hereto shows the pertinent legislative drafts of Section 11(f). Pertinent excerpts from the Senate debate are contained in Appendix C hereto (numbers have been supplied to the various excerpts in Appendix C for convenience of reference).



section, quoted above (p. 18), with the limiting words "in any such proceeding". See (c) in Appendix B. And the words "in any such proceeding" can mean only a proceeding in which a receiver or trustee is appointed.

The statement by Senator Wheeler <sup>12</sup> and the committee report which the Commission quotes at pages 24 and 25 of its brief relate to the bill *prior to the change*.

The bill which was voted into law does not say "in any proceeding". It says "in any such proceeding." Such a change loses none of its significance because not separately discussed on the floor.

The earlier drafts had also contained several other features which were deleted in Section 11(f) as finally adopted. The discussions which did take place as to those other changes throw sufficient light on the change from *any* proceeding to "any *such* proceeding" to show that the Congress knew what it was doing and did it deliberately. These other changes were with respect to (1) the power given the Commission in the earlier drafts to institute reorganization proceedings under Section 77B if the Commission determined that a registered holding company or subsidiary was insolvent or unable to pay its debts as they mature, and (2) the requirement in the earlier drafts that the court appoint the Commission as trustee or receiver upon the Commission's request.

The debates on these points make it clear that the objective of Congress in Section 11(f) was to use the Commission as a "watch dog" to protect investors from "racketeering receiverships".

This appears throughout the debate. "We have had evidence . . . of insolvency receivership matters"; "scandals in connection with the receiverships"; "the reason for these provisions . . . is . . . a notorious fact . . . that a racket has existed in the matter of these re-

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12. See (1) in Appendix C.

ceiverships"; "All we are seeking to do in this whole section is to protect persons . . . from a racketeering receivership"; and "to put an end to an evil . . . receiverships and scandals which have developed". See particularly excerpts numbered (3), (4), (8), (27), (30), and (31)-(37) in Appendix C hereto.

The two powers above referred to which were originally proposed to be conferred on the Commission—the power to require 77B reorganizations and the power to require its own appointment as trustee or receiver—were deleted because the Congress did not regard these powers as necessary to the accomplishment of this objective.

Senator Wheeler, floor manager of the bill, himself proposed the amendment depriving the Commission of its power to initiate bankruptcy proceedings (excerpt (5) in Appendix C) and accepted the amendment making appointment of the Commission as trustee or receiver discretionary with the court rather than mandatory. 79 CONG. REC. 8939 (1935).

To meet the receivership problem, the Congress, in Section 11(f) as finally passed, gave the Commission certain powers in connection with the appointment of trustees and receivers and with respect to reorganization plans and fees in connection therewith. But, to meet in part objections that the section went too far, it limited the exercise of those powers to reorganizations where a trustee or receiver was to be appointed by a court.

The phrase "under Section 77B or otherwise" was changed to "in any such proceeding" (see (c) of Appendix B) without any discussion or vote on the floor of the Senate, and the change appears for the first time officially in the bill which was sent to the House. 79 CONG. REC. 10307 (1935).

It left the Commission power over fees where a possible "racketeering receivership" was involved. It was a change entirely consistent in objective with the other two changes mentioned above.

Though discussion was in large part concentrated on Section 11, no question was raised about the change in this sentence throughout the further consideration of the bill. It is inconceivable that a change made with such preciseness and clarity, in a section subject to the widest study and criticism from all points of view, would not reflect the purpose which Congress sought to achieve.

With no ambiguity in either the Act or the legislative history, the unanimity with which the Court of Appeals held below that Section 11(f) applies only when a trustee or receiver has been appointed was only to be expected.

Since no trustee or receiver was appointed in the instant case, Section 11(f) can have no application.

Until recent years, the Commission itself apparently invoked Section 11(f) only when a trustee had been appointed. Compare *Laclede Gas Light Co.*, 25 SEC 382 (1947) with *International Hydro Electric System*, 27 SEC 580 (1948).

Further, the Commission's present argument under Section 11(f) proves too much. If the Commission's construction of Section 11(f) were correct, it would have jurisdiction over fees paid by any individual stockholder, whether or not such stockholder was a statutory parent. For, so far as the Commission's construction of Section 11(f) is concerned, there is no justification for treating one stockholder differently from any other—be he a statutory parent or not.

Yet the Commission has apparently never asserted any jurisdiction over fees paid by stockholders generally, but has on numerous occasions contented itself with granting or denying compensation out of the estate. See, e.g., *Columbia Gas & Electric Co.*, 17 SEC 549 (1944); *Laclede Gas Light Co.*, 25 SEC 382 (1947); *National Power & Light Co.*, H.C.A. Rel. No. 10321, Dec. 28, 1950; *The North American Co.*, H.C.A. Rel. No. 10533, May 7, 1951.

The Commission's position on Section 11(f) must fail in this case, even apart from the construction of the phrase "in any such proceeding", since Section 11(f) confers jurisdiction only over fees paid "in connection with" a reorganization.

A fee paid "in connection with" a reorganization as used in Section 11(f) can only mean a fee paid out of the assets of the reorganized company.

This point<sup>13</sup> was aptly and succinctly stated by the Court below as follows (R. 310):

"If we assume, arguendo, that such a construction is permissible, the provision does not even then reach the fee to be paid this appellant unless the words 'any and all fees, expenses and remuneration to whomsoever paid, *in connection with*' (emphasis added) include payments which are not made by the Company whose attempted reorganization is the object of the proceeding, or which in any way change the financial impact of the plan which is the outcome of the proceedings, whatever that may be, upon persons having a bona fide interest in it. We are not prepared so to construe them for the reasons stated in our discussion of the jurisdiction of the Commission in respect to the control of fees and expenses under subsection (e) and, as the payment of the fee which Bond and Share has agreed to pay the appellant is a business expense of that company and not an obligation of, or one to be imposed upon, Electric, we hold that it is not a fee paid 'in connection with' the proceeding for the reorganization of Electric within the meaning of the just quoted phrase as used in subsection (f)."

At one time, the Commission itself apparently agreed with this construction of the "in connection with" phrase

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13. While the Commission on p. 32 of its brief refers to this as the "heart" of the opinion of the Court of Appeals below, it seems quite clear it was a secondary reason for holding that Section 11(f) did not support the Commission in this case.

in Section 11(f). It expressly disclaimed interest in any fee which might be paid to counsel by individual stockholders from their own funds even where a trustee had been appointed and Section 11(f) was therefore pertinent. See *International Hydro Electric System*, 27 SEC 580, 604 (1948).

In reaching this conclusion the Court of Appeals below was aware of and cited in its opinion the cases which the Commission relies on as supporting the general authority it claims under Section 11(f), *Halsted v. SEC*, 182 F. 2d 660 (D. C. Cir. 1950) and *SEC v. Cogan*, 201 F. 2d 78 (9th Cir. 1952). The Court quite properly pointed out (R. 308) that the language in those cases "should be read in the light of the issues there being decided." In both cases, the fee was to be paid out of the reorganization estate.

The issues raised in this case were not discussed in the opinion in either the *Halsted* or *Cogan* cases. The jurisdiction of the Commission over fees was not challenged in either case and was not argued in the briefs. This is scarcely surprising since both cases involved fees and expenses of opposition stockholder groups whose only hope of obtaining compensation was through an award by the Commission.

In the *Cogan* case, in addition, the plan itself foreclosed any question of fee jurisdiction by providing for the payment by the reorganized company of a specified fee to counsel for a stockholders' committee. The Commission disapproved this provision on the ground of an alleged improper conflict of interest on the part of such counsel. The reversal of this Commission order by the District Court was affirmed by the Court of Appeals solely on the question of the propriety and the scope of the District Court's review of the merits of the order.

Other complicating factors make the *Halsted* case unique. It arose upon an appeal from an order of the Commission under Section 12(e) of the Act and Rule U-62 of

the Commission's Rules and Regulations, both of which deal only with solicitations of proxies. The order under review only denied a committee permission to circularize stockholders for contributions to defray expenses pending the hoped-for payment of such expenses out of the reorganization estate after the consummation of the plan.

The opinion of the Court makes it clear that it regarded the Commission's action under Section 12(e) as justified to protect the jurisdiction it might later have over fees to be paid out of the estate in the subsequent proceeding in the District Court under Section 11(e) for the enforcement of the plan.

This is indicated by the statements in the Court's opinion at pages 666 and 667 of 182 F. (2d):

"Beyond question the coverage of Section 11(f) includes fees payable *in the court proceeding from company funds*, and it is from those funds (and solely from those funds) that the committee here involved has announced it will ultimately seek its compensation." (Italics supplied.)

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"The Commission could properly find that jurisdiction to be threatened with defeat by the proposed solicitation. It is a power which deserves protection from evasion and circumvention. . . . We believe that *under section 12(e)* the Commission had power to deny the permission requested and that its action should not be disturbed." (Italics supplied.)

The Commission also cites *Leiman v. Guttman*, 336 U. S. 1 (1949) and a footnote from *American Power and Light Co. v. SEC*, 329 U. S. 90, 114 (1946). As heretofore demonstrated (*supra*, p. 16) the *Leiman* case, involving an altogether different statute, in no way supports the Commission's attempt to override the plain meaning of Section 11(f). And the footnote quoted from the *American Power & Light* case is the most casual kind of dictum—a general

description of the nature of Sections 11(f) and 11(g) in a case in which fees were not even in issue.

The only appellate court which has had any occasion to study the questions raised in this case is the Court of Appeals below in this case. That court unanimously concluded that the Commission is without jurisdiction over the Drexel fee.

**C. The Commission Does Not Achieve Jurisdiction From Sections of the Act Not Applicable Nor From the "Bootstrap" Argument.**

The Public Utility Holding Company Act of 1935 did not purport to grant the Commission power over all activities of holding companies and their subsidiaries.

A technical and complex statute, it contained specific grants of jurisdiction over carefully enumerated kinds of financial transactions, as well as the power to bring about integration and simplification under Section 11.

In connection with certain of these financial transactions, such as security issues and acquisitions of securities and utility assets, the Commission was granted in negative terms a limited jurisdiction over fees incurred.

None of these negative fee provisions gives the Commission authority over the Drexel fee in the instant case.

Bond & Share in this case filed an Application-Declaration under Sections 10, 12(c) and 12(f) with respect to certain of its own transactions resulting from the consummation of the Electric Plan.<sup>14</sup> The Commission approved that Application-Declaration and permitted it to become effective without making any adverse finding and without

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14. Bond & Share's Application-Declaration also referred to Section 11 although it was taking no action under that section. It was apparently deemed applicable because the action being taken by Bond & Share was consistent with the objectives of Section 11. The inapplicability of the Commission's fee jurisdiction under Section 11 to the Drexel fee is discussed in the preceding sections of this brief.



reserving jurisdiction to investigate or approve fees after the consummation of the transactions covered by the Application-Declaration.

Neither Sections 12(e) nor 12(f), which were cited in the Bond & Share Application-Declaration, refers to fees at all.

Section 10, also cited by Bond & Share in its Application-Declaration, confers its fee jurisdiction through a negative requirement: the Commission is *required* to approve an acquisition *unless* it finds, among other things, that fees are not reasonable. Section 10(b)(2). There is no grant of jurisdiction over fees except as findings are made at the time of approval or disapproval of the proposed action. In unconditionally granting and permitting to become effective the Application-Declaration, the Commission has completed its function under Section 10 and no jurisdiction over fees remains in the Commission under that Section.

Thus, to the extent the Commission might claim to have had fee jurisdiction with respect to the limited portion of Drexel's services allocable to the acquisition of securities under Section 10, that jurisdiction has been exhausted.

Once such an approval has been granted and the transaction consummated in reliance on it, the approval cannot thereafter be effectively revoked and re-granted with retroactive conditions. *Chapman v. El Paso Natural Gas Co.* 204 F. 2d 46 (D. C. Cir. 1953). It would be not only violative of the language of the Act but manifestly unreasonable to read any continuing jurisdiction into Section 10. Business transactions cannot be consummated upon the basis of revocable approvals.

Apparently the Commission itself does not press its argument that Section 10 authorizes part of its action in this case. For at pages 14 and 15 of its brief the Commission clearly subordinates this argument to what it terms the "more important", "primary" argument based on Section 11, using Section 10 (one of the enumerated instances in which it does have some fee jurisdiction) only

to support its arguments as to the interpretation of Section 11.

But the very act of the Congress in granting negative fee jurisdiction in the specific instances just referred to, although inapplicable in this case, is a strong argument that the Commission has no general unexpressed authority over fees. "The details with which the exemptions in this [Fair Labor Standards] Act have been made preclude their enlargement by implication." *Addison v. Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 618 (1944) rehearing denied 323 U. S. 809 (1944).

Where abuses adversely affecting the public had been experienced, the Congress enacted specific grants of jurisdiction over enumerated types of transactions, with specific references to fees in some of them. On the basis of simple logic and familiar principles of construction, one must conclude that there was no Congressional intention to grant further, unexpressed general powers over fees paid by a registered holding company.

Even the so-called "indictment" of holding companies, Section 1(b) of the Act, does not mention fees. And Section 1(c) states the entire Act is to be interpreted to meet the problems and evils there enumerated.

"When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted." *Stark v. Wickard*, 321 U. S. 288, 309 (1944). This principle applies to the Commission as well as any other agency. In *re Electric Bond & Share Co.*, *supra*, 80 F. Supp. at p. 798.

Bereft of support in the Act, in the legislative history or in the decided cases, the Commission resorts to an argument in direct contradiction to this fundamental principle of administrative authority.

The major point in the Commission's brief is that since it has jurisdiction over what it terms "substantially all" major financial transactions of registered holding com-

panies, and over fees in a number of such transactions, Section 11 should be interpreted to give it jurisdiction in this case. (Commission brief, pp. 14-15, 18-22).

Nowhere in the Act is the Commission granted general jurisdiction over "substantially all" of such transactions. If that were true, the Act would not be so detailed and carefully drawn. Indeed, if there were such a vague statutory grant of power to an administrative commission, it would doubtless be void for lack of specificity.

In any event, the gap between "all" and the claimed "substantially all" is the difference between carefully granted statutory power and complete arbitrary power.

If the grant of extensive but specific powers can be used to override limiting phrases contained in a particular section, it is difficult to find the limits of the authority of regulatory agencies or to give meaning to a Congressional enactment.

Finally, the Commission uses the well worn "bootstrap" argument which attempts to ground jurisdiction in a series of past instances where power has been exercised without challenge. (Commission brief, pp. 17, 35-37; footnotes 1, 2 and 3 at pp. 4, 5 and 6.)

It is sufficient to refer to the remarks of Judge Pine in the case of *Youngstown Steel & Tube Co. v. Sawyer*, 103 F. Supp. 569, 575 (D. D. C. 1952):

"He [the defendant] next refers to seizures by former presidents, some during war and several shortly preceding a war, without the authority of statute, but it is difficult to follow his argument that several prior acts apparently unauthorized by law, but never questioned in the courts, by repetition clothe a later unauthorized act with the cloak of legality. Apparently, according to his theory, several repetitive, unchallenged, illegal acts sanctify those committed thereafter. I disagree."

This view was approved on appeal by the Supreme Court in 343 U. S. 579 (1952).

**CONCLUSION.**

The unanimous decision of the Court of Appeals for the Second Circuit correctly interpreted and applied the Act in this case and its decision should be affirmed.

Respectfully submitted,

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JOHN MULFORD,

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January 21, 1955

## **APPENDIX A.**

**Reprint of Section 11(e) and Section 11(f) of the Public Utility Holding Company Act of 1935. 49 Stat. 820, 15 U. S. C. 79(k).**

**“Sec. 11 • • •**

**“(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever**

located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

“(f) In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court may constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed, and in any such proceeding the court shall not appoint any person other than the Commission as trustee or receiver without notifying the Commission and giving it an opportunity to be heard before making any such appointment. In no proceeding under this section or otherwise shall the Commission be appointed as trustee or receiver without its express consent. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for

the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission."



## APPENDIX B.

**Legislative Drafts of Section 11(f) of the Public Utility Holding Company Act of 1935.**

(a) *Section 11(d) of S. 1725, 74th Cong., 1st Sess., and Section 10(d) of H. R. 5423, 74th Cong., 1st Sess., identical bills except for the short title and the number of sections, introduced in the Senate and House, respectively, on February 6, 1935:*

“If, in the judgment of the Commission, any registered holding company or any subsidiary company thereof is insolvent or unable to pay its debts as they mature, the Commission shall have power to institute proceedings for the reorganization of such company under section 77B of the Act of July 1, 1898, entitled ‘An Act to establish a uniform system of bankruptcy throughout the United States’, as amended. In any such proceedings or in any other proceedings in a court of the United States, whether under said section 77B or otherwise, by whomsoever instituted, for the reorganization or liquidation of any registered holding company or subsidiary company thereof or in which a receiver or trustee of any such company or any assets thereof is appointed, the court, at the request of the Commission, shall have jurisdiction, and it shall be the duty of the court, to constitute and appoint the Commission as sole trustee or receiver, whether or not a trustee or receiver shall theretofore have been appointed. In any such proceedings a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be prepared in the first instance by the Commission or,

subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. All fees, expenses, and remuneration paid in connection with any reorganization or liquidation of a registered holding company or subsidiary company thereof, whether under said section 77B or otherwise, shall be subject to the approval of the Commission. The Commission shall be entitled to such reasonable compensation for its services as trustee or receiver in any proceedings as the court may allow."

(b) *Section 11 (f) of S. 2796, SEN. REP. No. 621, 74th Cong., 1st Sess., May 7 (calendar day, May 9) 1935:*

"If, in the judgment of the Commission, any registered holding company or any subsidiary company thereof is insolvent or unable to pay its debts as they mature, the Commission shall have power to institute proceedings for the reorganization of such company under section 77B of the Act of July 1, 1898, entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' as amended. In any proceeding pursuant to this section or in any other proceeding in a court of the United States, whether under said section 77B or otherwise, by whomsoever instituted, for the reorganization, dissolution, liquidation, bankruptcy, or receivership of any registered holding company or subsidiary company thereof or in which a receiver or trustee of any such company or any assets thereof is appointed, the court shall have jurisdiction to appoint a trustee or receiver, and, at the request of the Commission, shall have power, and it shall be the duty of the court to constitute and appoint the Commission as sole trustee or receiver, whether or not a trustee or receiver shall theretofore

have been appointed. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, whether under said section 77B or otherwise, shall be subject to approval by the Commission. The Commission shall be entitled to such reasonable compensation for its services as trustee or receiver in any proceeding as the court may allow."

(c) *Section 11 (f) of S. 2796, SEN. REP. No. 621, 74th Cong., 1st Sess., May 13 (calendar day, June 7), 1935:*

"(f) If, in the judgment of the Commission, any registered holding company or any subsidiary company thereof is insolvent or unable to pay its debts as they mature, the Commission shall have power to institute proceedings for the reorganization of such company under section 77B of the Act of July 1, 1908, entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', as amended

In any proceeding pursuant to this section or in any other proceeding in a court of the United States, whether under said section 77B or otherwise, by whomsoever instituted, for the reorganization, dissolution, liquidation, bankruptcy, or receivership of any registered holding company or subsidiary company thereof or in which a receiver or trustee of any such company or any assets thereof is appointed, the court shall have jurisdiction to appoint a trustee or receiver, and, at the request of the Commission, shall have power, and it shall be the duty of the court to constitute and appoint the Commission as sole trustee or receiver.

“(f) *In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court shall have power, and, at the request of the Commission, it shall be the duty of the court, to constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors*

or consumers, require that any or all fees, expenses and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, ~~whether under said section 77B or otherwise~~ *in any such proceedings*,<sup>1</sup> shall be subject to approval by the Commission. The Commission shall be entitled to such reasonable compensation for its services as trustee or receiver in any proceeding as the court may allow."<sup>2</sup>

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1. The singular of this word appears instead of the plural in the version passed by the Senate on June 11, 1935.

2. An amendment proposed on June 10, 1935 by Senator McKellar to strike this last sentence of Section 11(f) of S. 27<sup>th</sup> was agreed to without an objection on the Senate floor.

## APPENDIX C.

**Excerpts From Congressional Record, 74th Cong., 1st Sess. (1935).\***

(1) Senator Wheeler (Chairman of the Senate Committee on Interstate Commerce and floor manager of the bill):

“That brings me to the last point—the protection of the holding-company investor by the Securities and Exchange Commission. I do not blame the average investor for shuddering at the very word ‘reorganization.’ In the usual process of reorganization and regrouping of properties the investor might be given the same milking by reorganizing bankers and their lawyers that he has had to take in railroads, real estate, and every other kind of corporate reorganization. To meet that very danger the bill puts the entire process of reorganization, including fees and so-called ‘reorganization plans,’ under the control of the Securities and Exchange Commission.

“It also carefully requires the Federal courts to appoint the Securities and Exchange Commission itself trustee in any reorganization or dissolution proceeding. It does that to protect the investor by avoiding the jockeying for the selection, by a busy judge or from a neatly weighted panel, of those individual trustees who will ‘play ball’ with the right people. Such jockeying, every realistic lawyer and every realistic court knows, goes on, however subtly and secretively, in every bankruptcy, receivership, and reorganization proceeding. That provision has an exact precedent in the Federal statute which makes the Comptroller of the Currency, and not someone at large, cleverly thrust upon a court, the receiver of each closed national bank.

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\* Numbers supplied to the various excerpts for convenience of reference.

It has an exact precedent in State statutes which make a commissioner of insurance, and not someone at large, the receiver of each failed insurance company."

79 CONG. REC. 4607 (1935).

(2) Senator McKellar:

"Below that is the provision that it shall be the duty of the court to appoint the Commission as sole trustee or receiver. If such a provision had been in existence during the last 5 years, it would have resulted in putting into the hands of this Commission every company, I suppose, for this reason: A company does not have to be insolvent; all that is provided in the paragraph I have read is that if in the judgment of the Commission the company is unable to pay its debts as they mature, it shall be put into the hands of a receiver. The power in the Commission is not circumscribed, and to my mind it is a provision which would ruin the business of the utility companies entirely, and I do not think that is the purpose of the bill . . .

"It seems to me this sort of power would be an unwarranted one to give to any commission. Under the terms of the proposed act the Commission would be given the power, whenever in its judgment a company was unable to pay its debts, to put it into the hands of a receiver. It would have carte blanche to put any concern in the country into the hands of a receiver.

"I should like to have the Senator explain that provision.

(3) "MR. WHEELER. Mr. President, this provision was inserted for the purpose of protecting the investors in public utilities. We have had evidence before the Committee on Interstate Commerce of scandalous receivership matters all over the country in connection



with railroad reorganizations. It has been notorious. There have been investigations of receiverships by the Senate, and it has been shown that a court appoints some friend or some politician as a receiver of one of the railroads or one of the corporations, and they keep the company in the hands of the receivers for years, until they take everything away, and the poor stockholders get nothing at all.

•   •   •

[After reference was made by Senators Minton and Barkley to the provision of the banking law for appointment of the Comptroller of the Currency as receiver of insolvent banks]

(4) "MR. WHEELER. Everyone will admit, I think, that there has not been one-tenth of the scandals in connection with the receiverships of banks as have occurred in cases of private receiverships which have been set up all over the country."

*Id.* at 8443-44.

•   •   •

(5) "MR. WHEELER. Referring now to page 49, I move to amend by striking out lines 8 to 25, inclusive, and substituting therefor the following.

(6) "THE PRESIDENT *pro tempore*. The amendment will be stated.

(7) "THE CHIEF CLERK. On page 49 it is proposed to strike out lines 8 to 25, both inclusive, and down to and including the word 'appointed' in line 2, page 50, and to insert in lieu thereof the following:

"(f) In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company or any subsidiary company thereof, the court shall have power, and, at the request of the Commission, it shall be the duty of the court to constitute and appoint the Commission as sole trustee

or receiver subject to the direction and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed.

(8) "MR. WHEELER. In other words, we greatly liberalize that section, because as it read before it provided that if, in the judgment of the Commission, any registered holding company or any subsidiary company thereof was insolvent or unable to pay its debts, the Commission should have the power to institute proceedings for reorganization of such company under section 77B of the Bankruptcy Act. This amendment takes from the Commission the power to go into court and ask that a company be placed in the hands of a receiver because it is insolvent or because it cannot pay its debts. We simply say to the court now, 'In the event you appoint a receiver, then upon the request of the Commission you shall appoint the Commission such receiver, but the Commission shall be subject to the rules and orders of the court.'

"The reason for these provisions is that it has been a notorious fact, as we all know, and as the Chairman of the Judiciary Committee [MR. ASHURST] especially knows from his investigations, that a racket has existed in the matter of these receiverships. The section as amended, we believe, provides for the protection of investors in companies in the event they go into the hands of receivers—registered holding companies or their subsidiaries, companies which are engaged in interstate commerce—and only those companies—and that the Commission shall act as receiver and shall be subject to the direction and orders of the court.

(9) "MR. BORAH. Mr. President—

(10) "THE PRESIDENT pro tempore. Does the Senator from Montana yield to the Senator from Idaho?

(11) "MR. WHEELER. I yield.

(12) "MR. BORAH. I understand the sole effect of the amendment is to make it obligatory upon the court

to appoint the Commission as trustee or receiver in case the court adjudges the parties bankrupt.

(13) "MR. WHEELER. The purpose of the amendment is to make it clear that when the court appoints the Commission trustee or receiver, the Commission is to be subject always to the direction and orders of the court; and it is further designed to take away the power of the Commission to investigate bankruptcy proceedings under section 77B. The provision as it stands at the present time has been greatly criticized in some of the advertisements of some of the holding companies. They have held it out that what we were seeking to do was to take them over and have them condemned, thrown into receivership, and that the intention was to have the Government take them over. Of course, no such intention was in mind at all. All that was intended was exactly what we are doing here now for the protection of the investors. We have even taken from the Commission the right to go into court and ask that the company be placed in the hands of receivers. So that with this amendment, only if the court orders the company into receivership can the Commission ask that it shall be appointed as receiver or trustee.

(14) "MR. HASTINGS. Mr. President, will the Senator from Montana yield?

(15) "MR. WHEELER. I yield.

(16) "MR. HASTINGS. My recollection of the section, without having read it for a day or two, is that under the bill as reported by the committee the Commission itself could make application to the court if, in its judgment, any registered holding company or any subsidiary company thereof was insolvent or unable to pay its debts?

(17) "MR. WHEELER. That is correct.

(18) "MR. HASTINGS. Then the bill provided that, having made the application to the court, the court was compelled to appoint the Commission trustee, and

then that there could be no reorganization except the kind of reorganization suggested by the Commission itself. In other words, under the bill we have the Commission itself, which has no monetary interest in the matter, and which makes application for the bankruptcy proceeding, given power to have itself appointed trustee and then itself propose the plan of reorganization. I should like to know what changes the amendment makes in those three respects?

(19) "MR. WHEELER. The amendment completely changes the first of those three things, because, in the first place, it takes away from the Commission the right to go into court and ask the court to appoint a receiver.

(20) "MR. HASTINGS. That is the important matter.

(21) "MR. WHEELER. Yes. As I say, the provision was not intended as it has been interpreted; but I can readily understand how, in view of the language, it might raise a fear in the minds of some people, and they might say, 'The Commission may throw us into receivership and be appointed receiver, and then have a reorganization plan', and so forth. They might say, 'It is an inducement for the Commission to throw us into the hands of a receiver'; but the Senator from Delaware will agree with me that this language changes the whole situation.

(22) "MR. HASTINGS. Of course it is a little difficult to follow the language and remember it when one has not the amendment before him; but let me make an inquiry. The Senator says the amendment removes the first objection, which I think was the most serious one.

(23) "MR. WHEELER. Absolutely.

(24) "MR. HASTINGS. Does the amendment leave the other two provisions? As I remember, the Sena-

tor said it does provide that the Commission shall be named trustee or receiver by the court.

(25) "MR. WHEELER. That is correct.

(26) "MR. HASTINGS. Does it in any way affect the persons who may suggest the plan of reorganization?

(27) "MR. WHEELER. No. I will say to the Senator from Delaware that another Senator is talking to me about that subject, and we are trying to work out an amendment. On that last point of who may suggest the plan of reorganization, section 11 is quite clear that the suggestion may come from any interested person. It is not limited to the Commission's own plan, so long as the plan is eventually approved by the Commission. All we are seeking to do in this whole section is to protect persons who have invested their money from a racketeering receivership, such as the Senator well knows has taken place in many cases throughout the country, and particularly as was investigated by the Judiciary Committee of this body, under the leadership of the Senator from Arizona [MR. ASHURST].

(28) "The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from Montana.

(29) "The amendment was agreed to."

*Id.* at 8844-45.

• • •  
[Referring to the provision requiring that the Commission be appointed trustee]

(30) "MR. WHEELER. The only thing we are trying to do in this bill, with reference to this matter, is to put an end to an evil. I do not know whether the Senator from Utah [MR. KING], who sits before me, has been a member of the subcommittee of the Judiciary Committee which has been investigating receiverships and scandals which have developed. . . . The Congress

of the United States recognized the scandals which have been going on in the appointment of receivers all over the country. It is a notorious fact that there have been scandals in receiverships and trusteeships, and in connection with the Milwaukee Railroad particularly.

(31) "MR. McKELLAR. I agree with the Senator that there have been scandals in connection with receiverships time and again; but that does not justify the Congress in adopting an unconstitutional provision to deal with the condition."

*Id.* at 8857.

. . .

(32) "MR. WHEELER. . . . When a reorganization plan is offered, if the utilities can go to some one of the Federal judges and pick out a receiver or a trustee who is friendly to them, they can perpetrate a fraud and a racket upon the investor . . .

(33) "MR. CLARK. Does the Senator from Montana know any reason on earth why Federal Commissioners appointed by the President and confirmed by the Senate necessarily have a higher standard of honor, or a higher standard of any sort, than a Federal judge appointed by the President and confirmed by the Senate?

"I must say to the Senator from Montana that I cannot go along with him in this statement that somebody may sneak in to one of the Federal judges. Somebody is just as likely to sneak in to a member of the Federal Securities Commission . . .

(34) "MR. BARKLEY. Just a moment. Another thing that enters into the matter is to avoid, as the Senator from Montana has repeatedly said, the appointment of outsiders or insiders, as a matter of fact; and that is no reflection on the integrity of the court. We all know how frequently these things come about. Application is made to the court for the appointment of a receiver or a trustee— . . .

(35) "MR. McKELLAR. I imagine the framing of this particular language was brought about—indeed, I am rather inclined to think the chairman of the committee told me it was—because of many scandals in the appointment of receivers. We all know that that has taken place; but with this language changed as I propose to change it, a repetition of such scandals would be almost impossible.

(36) "MR. CLARK. Mr. President, if the language which the Senator has proposed to insert in the bill is offered as a result of just criticisms or unjust criticisms of Federal receiverships, the remedy is to change the law, and, if necessary, to change the Constitution so as to make it easier to impeach or remove Federal judges who misuse their offices.

"The whole theory of a receivership is that the insolvent estate is put into the hands of a judge; and when a receiver is appointed, according to the theory of the law as it has always been up to the time this particular measure came along, the theory has been that the receiver was merely the agent of the court for whom the court was responsible, over whom the court exercised the ultimate control; and we all know that judges have been impeached, and once in a while a judge has been convicted, because of the acts of his receivers . . .

(37) "MR. WHEELER. An amendment has been adopted which the Senator from North Carolina and I worked out. I have no interest in the matter, and nobody else has, except that, so far as it is humanly possible, we want to protect the investors who, the utility people say, will be ruined. I know, as a matter of fact, that one of these companies which has been one of the worst in the United States will probably apply to the courts in a very short time for a receivership or trusteeship for the purpose of reorganizing, because it is in such shape that that must be done.



I know just as well as that I am standing here that if that is done they expect to go into the Federal court and undertake to have trustees and receivers appointed, and without casting any reflection upon any court, we do not need to do that. The Senate of the United States, under the leadership of the Chairman of the Judiciary Committee of the Senate, has been investigating receiverships from one end of the country to the other, and every Member of the Senate who has followed the investigation knows that there has been wide-spread scandal . . .

(38) "MR. HASTINGS. Let me call the attention of the Senator from Tennessee to the last four lines of paragraph (f), which we are now discussing, in response to the suggestion that the Commission is to be appointed receiver because of the bad conditions which have been developed in connection with the appointment of receivers. Most of those criticisms are due to the compensation allowed receivers. But in the very bill before us it is provided that the Commission shall be entitled to such reasonable compensation for its services as trustee or receiver in any proceeding as the court may allow. I should like to inquire how that relieves us under any condition of the trouble we have experienced in the past.

(39) "MR. McKELLAR. Mr. President, I may say that I hope to have those lines stricken out, because I think that is an open invitation to bring about the very state of scandal of which the Senator from Montana, the chairman of the committee spoke a few moments ago and I do not think such a provision ought to be in the bill."

*Id.* at 8936-38.

. . .

(40) "MR. BONE. Mr. President, I have just re-entered the Chamber, and I understand that a moment

ago an amendment was adopted which restricts the appointment of a receiver in insolvency proceedings or rather prevents the naming of the Commission as trustee or receiver. I regret that has been done. I feel that some of my brethren may live to regret it.

"The Associated Gas & Electric Co., one of the largest outfits in the country, is now facing insolvency proceedings. This movement may result in the naming of one of the men connected with that organization as trustee or receiver. If there be any untoward results arising from such a receivership, this body will surely have to answer for it to the people of the country. The thing will smell to high heaven if they pursue the method so frequently pursued in cases of that kind. We might as well be advised now. If the Associated Gas & Electric Co. should get into trouble and there should be a scandal, I want Senators to remember what I say now on the floor of the Senate today, because I am going to remind them of it. This might easily project itself into a situation that would be a national scandal. We should allow the Government through its own agency to handle the matter if it reaches the stage of receivership.

"We had a Federal judge before us not long ago under impeachment proceedings and we have seen how tainted and corrupt some of these receivership matters may be. When a judge appoints a trustee or a receiver, he frequently names one of his own friends, and then he has a friend practicing law before him. There is not a lawyer in this body who has not seen that thing occur time after time. We almost impeached a Federal judge for doing that identical thing. He should have been impeached. I voted for his impeachment. I think a court ought to be in a class with Caesar's wife—above reproach, above suspicion—and some of our courts have not been above reproach or above suspicion. If there is any scandal connected with

this Associated Gas affair, Members of the United States Senate who voted to remove vital receivership control from the hands of the Commission are going to have to bear their share of the moral obloquy resulting from that proceeding, if the poor security holders are rooked, and we might have done something to prevent it, and did not."

*Id.* at 8943.



IN THE  
**Supreme Court of the United States**

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October Term, 1954.

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**No. 153.**

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SECURITIES AND EXCHANGE COMMISSION,  
*Petitioner,*  
*against*

DREXEL AND COMPANY,  
*Respondent.*

---

On Writ of Certiorari to the United States Court of Appeals  
for the Second Circuit.

---

**Petition by Respondent for Rehearing.**

---

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IN THE  
**Supreme Court of the United States.**

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OCTOBER TERM, 1954.

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No. 153.

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SECURITIES AND EXCHANGE COMMISSION,  
*Petitioner,*  
*against*

DREXEL AND COMPANY,  
*Respondent.*

---

**PETITION BY RESPONDENT FOR REHEARING.**

Drexel & Co., Respondent, respectfully petitions the Court for a rehearing of the Court's decision dated February 28, 1955 in the above entitled proceeding.

Rehearing and a modification of the Court's opinion are required because Section 12(d) of the Public Utility Holding Company Act of 1935 (the "Act"), relied on by the Court, is not and could not be applicable to the instant proceeding. Section 12(d) applies only to the "sale" by a registered holding company of a "security which it owns of any public utility company". It has no application to the "sale" in the instant case of the stock of Electric Light & Power Corporation ("Electric"), which has never been a "public utility company" as that term is defined in the Act.

No reservation of jurisdiction by the Commission could have reached that part of Drexel's fee properly allocable to services not covered by the Application-Declaration of Electric Bond & Share Company ("Bond & Share").

These points are central to the decisive issue of the extent of the jurisdiction of the Securities and Exchange Commission (the "Commission") over the Drexel fee herein because of the broad injunction entered by the District Court below.

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The opinion of the Supreme Court rests on Section 10 and Section 12(d) of the Act (see pp. 2-4, including footnote on p. 2).

Section 12(d), however, was not and could not have been applicable to any of the transactions covered by Bond & Share's Application-Declaration (R. 330, 334). Hence, even though, as the Court found, the Commission's order (R. 36a, 39a) did reserve all available jurisdiction it had over the Drexel fee, the Commission could not exercise jurisdiction which it did not have—and it never had any jurisdiction over any part of the Drexel fee on the basis of Section 12(d).

Section 12(d) provides as follows:

"(d) It shall be unlawful for any registered holding company . . . to sell any security which it owns of *any public-utility company*, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest. . . ." [Italics supplied].

A "public-utility company" is defined in Section 2(a)(5) of the Act as "an electric utility company or a gas utility company".

"Electric and gas utility" companies are defined in Sections 2(a)(3) and 2(a)(4) of the Act as follows:



“ ‘Electric utility company’ means any company which owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale. . . .”

“ ‘Gas utility company’ means any company which owns or operates facilities used for the distribution at retail . . . of natural or manufactured gas for heat, light, or power. \* \* \*”

Electric was not and never has been an operating gas or electric utility company. From its inception to its dissolution it was always solely and exclusively a holding company.<sup>1</sup>

Hence, any “sale” by Bond & Share of Electric stock was not the sale of a security of a “public-utility company” as that term is defined in the Act and could not have been subject to Section 12(d).

In fact the record shows that no application was ever made or any action taken under Section 12(d) in the instant proceeding. The Application-Declaration filed by Bond & Share quite properly refers (R. 334) only to Sections 12(c) and 12(f) and not to Section 12(d). Unlike Section 12(d), relied on by the Court, neither Section 12(c) nor Section 12(f) contains any reference to fees whatsoever. The order of the Commission approving the Plan and the Application-Declaration (R. 36a-41a) does not refer to any particular sections of the Act.<sup>2</sup>

While the Commission at page 20 of its brief on appeal to this Court discussed Section 12(d) of the Act, it did so only as a theoretical instance in which it *would* have jurisdiction over fees in appropriate cases where that section is

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1. This has never been disputed. See H. C. A. Rel. No. 8889 (March 2, 1949) requiring certain amendments in Electric's Plan.

2. The opinion (R. 212a) and order (R. 267a) of the Commission on the fee application refer only to Section 11(e); no mention is made of either Section 10 or Section 12.

applicable. It does not state there or in its statement of facts (p. 8) that any application was made by Bond & Share, or any action taken, under Section 12(d) in the instant case, and it could not so state in view of the Act and the record.

In the instant case, on the basis of the Court's holding that the jurisdiction was reserved by the Commission, only Section 10 could be properly held to have afforded the Commission jurisdiction over any part of the Drexel fee.

Thus, under Section 10 the Court held that the Commission had jurisdiction over Bond & Share's acquisition of new securities distributed pursuant to the Electric plan, since that section applies to the "acquisition" by a registered holding company of *any* securities, whether or not issued by a public utility company.

In conferring fee jurisdiction, Section 10(b) provides in relevant part:

"If the requirements of subsection (f) are satisfied, the Commission shall approve the acquisition unless the Commission finds that—

• • •

"(2) in case of the acquisition of securities or utility assets, the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired; . . ."

It should be noted that Section 10(b)(2) relates only to fees incurred "in connection with" an "acquisition". It does not have the enlarging reference to fees paid in connection with "the transactions incident thereto" which was contained in the Commission's order and on which the Court relied in its opinion. Hence fees incurred in connection either with the "sale" of the Electric securities or

with any transaction other than the "acquisition" may not properly be brought within Section 10(b)(2).<sup>3</sup>

Thus, viewing Bond & Share's transactions in the manner required by the statute and the Courts' decision as to reservation of jurisdiction, *only one transaction*—Bond & Share's "acquisition"—*is under a provision of the Act conferring fee jurisdiction on the Commission.*

Except for this "acquisition" by Bond & Share of the stock of Middle South Utilities, Inc. and United Gas Corporation pursuant to Electric's Section 11(c) Plan, therefore, Drexel should be able to receive from Bond & Share, without Commission approval, such part of its fee as would be fairly applicable to other matters such as Bond & Share's "sale" of Electric securities, the retirement of Electric preferred stock, and financial and economic studies not in connection with any transaction consummated under the Plan (R. 61a-117a). This result is compelled by the minutely detailed Act which is clearly drafted to deal separately with, and to confer on the Commission separate and disparate jurisdiction over, limited aspects of affairs which in a business sense might be, but in the statutory sense cannot be, regarded as single transactions.

Accordingly, the judgment of this Court and, ultimately, the injunction entered by the District Court, assuming it could be properly entered at all in this proceeding, must be modified to reflect the limited scope of the Commission's statutory jurisdiction.

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3. In addition to Bond & Share's "sale" of Electric securities and "acquisition" of new securities distributed on the dissolution of Electric, Bond & Share's Application-Declaration covered a third transaction, the settlement of intra-system claims. The Court held this settlement was incidental to the "sale" under Section 12(d) and the "acquisition" under Section 10. Section 12(d) not being applicable, the settlement of the claims can scarcely be regarded as sufficiently incidental to the "acquisition" alone to bring it under Section 10. In any event, however, so far as Drexel is concerned, the question is moot for it "never had anything whatever to do" with the settlement of claims (R. 121a).

Drexel is entitled to this relief in view of the nature of the injunction issued by the District Court. In its order the District Court (R. 291a-292a) enjoined Bond & Share and Drexel from "paying or receiving any fees or expenses approval of which was denied in said Orders of the Commission . . ." The Commission order as to the Drexel fee (R. 269a-270a) denied the application to the extent it exceeded the \$50,000 allowed. Thus, Bond & Share was enjoined by the District Court from paying, and Drexel was enjoined from receiving, more than \$50,000 for all of the services covered by Drexel's application. That application (R. 59a) included services which lie clearly beyond the scope of Section 10.

Hence, unless it is made clear that only a limited part of the Drexel fee is subject to the jurisdiction of the Commission, Bond & Share will be prevented from paying to Drexel that part of the fee not subject to the jurisdiction of the Commission and which Drexel is entitled to receive.

Moreover, the District Court could not properly enter an injunction against Drexel and Bond & Share in this proceeding on the basis of this Court's decision that Commission jurisdiction rests on Sections 10 and 12(d), which, unlike Section 11(e), do not contain a special provision for Court enforcement. Such an injunction requires an independent suit under Section 18(f) of the Act, which authorizes the Commission to apply to a Court to enjoin any threatened violation of the Act (including Sections 10 and 12(d)). This would raise issues which could not properly be and were not raised before the District Court in this case, since that Court was enforcing a reorganization plan under Section 11(e) and the proceeding was so regarded by all parties. This is apparent from the Commission's notice of hearing (HCA Rel. No. 9703, March 7, 1950), opinion (R. 212a), order (R. 267a), and supplemental application to the District Court below (R. 270), none of which contains any indication that the Commission thought it was

acting pursuant to powers under Section 10 and Section 12 of the Act reserved upon the approval of Bond & Share's Application-Declaration. On the contrary, all of these pronouncements refer only to Section 11(e) and describe or contemplate action only under that Section.

Such an 11(e) plan enforcement proceeding is essentially a review of Commission action on the record before the Commission. The findings of the Commission are final if supported by substantial evidence and the Court is deprived of the discretion which it would have in a proceeding under Section 18(f). Compare *SEC v. Central Illinois Securities Corp.*, 338 U. S. 96 (1949) with *Electric Bond & Share Co. v. SEC*, 303 U. S. 419 (1938) and *The Hecht Co. v. Bowles*, 321 U. S. 321 (1944). The Commission's Supplemental Application to the District Court below and the action of the District Court were on the basis of such a review proceeding and the District Court made its findings accordingly (R. 291a).

On the other hand, in a suit under Section 18(f), Drexel would have been entitled to a trial *de novo* of at least some of the issues before the District Court, as well as an opportunity to raise the question of whether the Court should itself determine, on a full weighing of the evidence, the reasonableness of the fee, a question which has never been authoritatively determined in a case where, as here, the agency is seeking injunctive relief. See *FPC v. Panhandle Eastern Pipe Line Co.*, 337 U. S. 498 (1949); *SEC v. Okin*, 132 F. 2d 784 (2d Cir. 1943).

The Court's decision in the instant case, if permitted to stand, deprives Drexel of any opportunity ever to raise the issues which would have arisen in a suit against it under Section 18(f) without the Commission or any Court ever having made any findings on them. Drexel is thus deprived of substantial rights by the appellate nature of the instant proceeding, which has, until the decision of this Court, been regarded by all parties, including the Commission, as solely a proceeding to enforce a Section 11(e) plan.

*Petition for Rehearing*

WHEREFORE, Respondent Drexel & Co. respectfully petitions the Court

(1) to enter an order granting a rehearing in the above entitled proceeding, limited to the issues raised herein; and

(2) whether or not the petition for rehearing is granted, to revise the opinion of the Court or so phrase its mandate to the Court below as to make it clear that the jurisdiction of the Commission is limited, in accordance with Section 10(b)(2), to that portion of the Drexel fee "to be given, directly or indirectly, in connection with" the acquisition by Bond & Share of the stock of Middle South Utilities, Inc. and United Gas Corporation pursuant to Electric's Section 11(e) Plan.

Respectfully submitted,

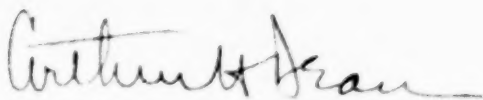
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March 23, 1955.

**CERTIFICATE OF COUNSEL.**

I hereby certify that the foregoing Petition for Re-hearing is presented in good faith and not for delay.

A handwritten signature in cursive script, reading "Arthur H. Dean". The signature is written in dark ink and is positioned above the printed name.

ARTHUR H. DEAN,

*Counsel for Respondent.*